

1 Am. Jur. 2d Abuse of Process Summary

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses civil liability for the misuse of a legal process in order to accomplish a purpose for which that process is not designed.

Federal Aspects:

The Fair Debt Collection Practices Act prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt, including the representation or implication or threat that nonpayment of any debt will result in the arrest or imprisonment of any person, or in any action that cannot legally be taken or that is not intended to be taken (see Am. Jur. 2d, Consumer and Borrower Protection[[WestlawNext® Search Query](#)]). The Federal Tort Claims Act does not permit recovery against the United States on a claim of abuse of process (see Am. Jur. 2d, Consumer and Borrower Protection[[WestlawNext® Search Query](#)]).

Treated Elsewhere:

Attachment as abuse of process, generally, see [Am. Jur. 2d, Attachment and Garnishment §§ 1 et seq.](#)

Debt collector's liability under Fair Debt Collection Practices Act for threatening to arrest debtor for nonpayment of debt, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 176 to 187](#)

Execution process by sheriff or other law enforcement officer, abuse of, see [Am. Jur. 2d, Sheriffs, Police, and Constables § 47](#)

False imprisonment as distinguished from tort of abuse of process, see [Am. Jur. 2d, False Imprisonment § 4](#)

Federal Tort Claims Act coverage, exclusion of abuse of process claims from, see [Am. Jur. 2d, Federal Tort Claims Act § 93](#)

Judicial sale as abuse of process, see [Am. Jur. 2d, Judicial Sales §§ 1 et seq.](#)

Malicious prosecution generally, see [Am. Jur. 2d, Malicious Prosecution §§ 1 et seq.](#)

1 Am. Jur. 2d Abuse of Process I A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.


I. Nature and Elements of Action

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  172 to 174, 176

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  172 to 174, 176

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 1

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.


I. Nature and Elements of Action

A. In General

§ 1. General considerations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  172 to 174, 176

Forms

Instructions to jury—Definition—Elements of action for abuse of process. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

"Abuse of process" may generally be defined as the use of a legal process,¹ whether criminal or civil,² against another primarily to accomplish a purpose for which the process was not designed.³

"Abuse of process" occurs when a person uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed.⁴ In this regard, the Restatement of Torts, 2d, states that one who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.⁵ It has also been stated that abuse of process is the misuse of legal process to accomplish some purpose outside the scope of the process itself,⁶ and that abuse of process occurs where someone attempts to achieve through use of the court that which the court is itself powerless to order.⁷ For example, a plaintiff company's filing of a lawsuit against another company, in an attempt to settle its dispute with that company, was not an abuse of process as the plaintiff's action never requested the court to reach beyond its authority.⁸

In its most basic sense, an action for abuse of process is intended to prevent parties from using litigation to pursue objectives other than those claimed in the suit, such as using a court's process as a weapon to compel another party to pay a different debt, or to take some action or refrain from it.⁹ Thus, the essence of a cause of action for abuse of process is a perversion of the process to accomplish some improper purpose.¹⁰

Because of its potential chilling effect on the right of access to the courts,¹¹ the tort of abuse of process is disfavored¹² and

must be narrowly or strictly construed¹³ to insure the individual a fair opportunity to present the claim.¹⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ As to what constitutes “process” within the meaning of the tort of abuse of process, see § 2.
- ² *Tranchina v. Arcinas*, 78 Cal. App. 2d 522, 178 P.2d 65 (1st Dist. 1947); *Bothmann v. Harrington*, 458 So. 2d 1163 (Fla. 3d DCA 1984); *March v. Cacioppo*, 37 Ill. App. 2d 235, 185 N.E.2d 397 (1st Dist. 1962); *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388 (Iowa 2001); *Melton v. Rickman*, 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945); *Publix Drug Co. v. Breyer Ice Cream Co.*, 347 Pa. 346, 32 A.2d 413 (1943); *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967).
Abuse of process can arise from both civil and criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002).
- ³ *Drum v. Bleau, Fox & Associates*, 107 Cal. App. 4th 1009, 132 Cal. Rptr. 2d 602 (2d Dist. 2003) (disapproved of on other grounds by, *Rusheen v. Cohen*, 37 Cal. 4th 1048, 39 Cal. Rptr. 3d 516, 128 P.3d 713 (2006)); *Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P.*, 260 Conn. 766, 802 A.2d 44 (2002); *Bothmann v. Harrington*, 458 So. 2d 1163 (Fla. 3d DCA 1984); *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388 (Iowa 2001); *Quaranto v. Silverman*, 345 Mass. 423, 187 N.E.2d 859 (1963); *Wood v. Bangs*, 199 Minn. 208, 271 N.W. 447 (1937); *Barnette v. Woody*, 242 N.C. 424, 88 S.E.2d 223 (1955); *Werner v. Plater-Zyberk*, 2002 PA Super 42, 799 A.2d 776 (2002); *Bennett v. Jones, Waldo, Holbrook & McDonough*, 2003 UT 9, 70 P.3d 17 (Utah 2003); *Rock v. Abrashin*, 154 Wash. 51, 280 P. 740, 65 A.L.R. 1280 (1929).
The tort of abuse of process occurs when a party has willfully misused criminal or civil process after it has issued in order to obtain a result not contemplated by law. *Carter v. Aramark Sports and Entertainment Services, Inc.*, 153 Md. App. 210, 835 A.2d 262 (2003).
A mother was not liable for abuse of process in connection with a child neglect proceeding against the father, even assuming there was a causal connection between her statements to doctors who filed a child abuse hotline report and the initiation of the proceeding, in the absence of any evidence that the mother actually used the proceeding for any purpose other than that for which it was intended, i.e., to determine whether the father had engaged in neglect. *Dobies v. Brefka*, 273 A.D.2d 776, 710 N.Y.S.2d 438 (3d Dep’t 2000).
- ⁴ *Jordet v. Jordet*, 2015 ND 76, 861 N.W.2d 147 (N.D. 2015); *Kustelski v. Taylor*, 2003 WI App 194, 266 Wis. 2d 940, 669 N.W.2d 780 (Ct. App. 2003).
- ⁵ Restatement Second, Torts § 682.
- ⁶ *Neurosurgery and Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 274 Ill. Dec. 152, 790 N.E.2d 925 (2d Dist. 2003).
- ⁷ *Preferred Properties, Inc. v. Indian River Estates, Inc.*, 276 F.3d 790, 2002 FED App. 0006P (6th Cir. 2002) (applying Ohio law).
- ⁸ *Penn, LLC v. Prosper Business Development Corp.*, 600 Fed. Appx. 393 (6th Cir. 2015) (applying Ohio law).
- ⁹ *Givens v. Mullikin ex rel. Estate of McElwaney*, 75 S.W.3d 383 (Tenn. 2002).
The common law tort of abuse of process under Pennsylvania law involves the perversion of the legal process after it has begun in order to achieve a result for which the process was not intended; a cause of action arises when the legal process is employed as a tactical weapon to coerce a desired result that is not the legitimate object of the process. *Ickes v. Grassmeyer*, 30 F. Supp. 3d 375 (W.D. Pa. 2014) (applying Pennsylvania law).
There are three categories of process under Massachusetts law for purposes of claim of abuse of process: (1) writs of attachment, (2) the process used to institute a civil action, and (3) the process related to the bringing of criminal charges. *Yacubian v. U.S.*, 952 F. Supp. 2d 334 (D. Mass. 2013), judgment aff’d on other grounds, 750 F.3d 100 (1st Cir. 2014), cert. denied, 135 S. Ct. 1915, 191 L. Ed. 2d 762 (2015) (applying Massachusetts law).
- ¹⁰ *Bennett v. Jones, Waldo, Holbrook & McDonough*, 2003 UT 9, 70 P.3d 17 (Utah 2003).
Using legal process primarily to harass and cause direct injury to an adversary could constitute a perversion of that process as required to support a claim for abuse of process under Pennsylvania law. *General Refractories Co. v.*

[Fireman's Fund Ins. Co., 337 F.3d 297 \(3d Cir. 2003\).](#)

The essence of the cause of action for abuse of process is the misuse of the court's power, usually to compel the victim to yield on some matter not involved in the suit. [Schmit v. Klumpanyan, 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 \(Ct. App. 2003\).](#)

¹¹ [Schmit v. Klumpanyan, 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 \(Ct. App. 2003\).](#)

¹² [Wagner Equipment Co. v. Wood, 938 F. Supp. 2d 1203 \(D.N.M. 2013\) \(applying New Mexico law\); Neurosurgery and Spine Surgery, S.C. v. Goldman, 339 Ill. App. 3d 177, 274 Ill. Dec. 152, 790 N.E.2d 925 \(2d Dist. 2003\); Schmit v. Klumpanyan, 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 \(Ct. App. 2003\).](#)

¹³ [Neurosurgery and Spine Surgery, S.C. v. Goldman, 339 Ill. App. 3d 177, 274 Ill. Dec. 152, 790 N.E.2d 925 \(2d Dist. 2003\); Weststar Mortg. Corp. v. Jackson, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 \(2002\); Wisconsin Public Service Corp. v. Andrews, 2009 WI App 30, 316 Wis. 2d 734, 766 N.W.2d 232 \(Ct. App. 2009\).](#)

¹⁴ [Schmit v. Klumpanyan, 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 \(Ct. App. 2003\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 2

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

A. In General

§ 2. Definition of “process”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Process](#)  174

In order to maintain an action for abuse of process, there must have been an issuance of legal¹ or judicial² process.

It has sometimes been said that the term “process,” as used in the tort of abuse of process, is interpreted broadly³ and encompasses the entire range of activities and procedures incident to the litigation process,⁴ including discovery proceedings, noticing of depositions, and issuing of subpoenas.⁵ It has also been stated that for purposes of abuse of process, “process” refers to the papers issued by a court to bring a party or property within its jurisdiction,⁶ such as a writ of attachment, the process used to initiate a civil action, or the process related to the bringing of criminal charges.⁷ That is, “process,” the abuse of which may support an abuse of process claim, is not limited to the original pleadings; depositions, motions, interrogatories and other requests for discovery, or legal maneuverings to compel or prohibit action by an opponent all invoke the authority of the court and are, therefore, the type of process that will support an abuse of process claim.⁸

CUMULATIVE SUPPLEMENT

Cases:

The institution of a civil action by summons and complaint is not legally considered process capable of being abused, as would be required for a claim of abuse of process. [Reszka v. Collins](#), 136 A.D.3d 1299, 25 N.Y.S.3d 457 (4th Dep’t 2016).

[END OF SUPPLEMENT]

Footnotes

- ¹ [Hokanson v. Lichtor](#), 5 Kan. App. 2d 802, 626 P.2d 214 (1981).
- ² [U.S. Steel, LLC, v. Tieco, Inc.](#), 261 F.3d 1275, 57 Fed. R. Evid. Serv. 1350 (11th Cir. 2001).
Because the purpose of the tort of abuse of process is to preserve the integrity of the court, the tort requires misuse of a judicial process, and therefore it does not extend to misuse of administrative proceedings even those involving agencies with “quasi-judicial” powers. [ComputerXpress, Inc. v. Jackson](#), 93 Cal. App. 4th 993, 113 Cal. Rptr. 2d 625 (4th Dist. 2001).
- ³ [General Refractories Co. v. Fireman’s Fund Ins. Co.](#), 337 F.3d 297 (3d Cir. 2003) (Pennsylvania law).
Although, for purposes of an abuse of process claim, the term “process” is not confined to the strict legal definition of the word, process is still an act done under the authority of the court for the purpose of perpetrating an injustice, i.e., a perversion of the judicial process to the accomplishment of an improper purpose. [Crackel v. Allstate Ins. Co.](#), 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004).
- ⁴ [General Refractories Co. v. Fireman’s Fund Ins. Co.](#), 337 F.3d 297 (3d Cir. 2003) (applying Pennsylvania law); [Hetronic Intern., Inc. v. Rempe](#), 2015 WL 1602081 (W.D. Okla. 2015) (applying Oklahoma law); [Crackel v. Allstate Ins. Co.](#), 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004); [Food Lion, Inc. v. United Food & Commercial Workers Intern. Union](#), 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002).
- ⁵ [General Refractories Co. v. Fireman’s Fund Ins. Co.](#), 337 F.3d 297 (3d Cir. 2003) (applying Pennsylvania law).
As to misuse of discovery of deposition procedures, see § 12.
- ⁶ [Vittands v. Sudduth](#), 49 Mass. App. Ct. 401, 730 N.E.2d 325 (2000); [Crowe v. Horizon Homes, Inc.](#), 116 S.W.3d 618 (Mo. Ct. App. E.D. 2003).
- ⁷ [Chemawa Country Golf, Inc. v. Wnuk](#), 9 Mass. App. Ct. 506, 402 N.E.2d 1069 (1980).
Residential landlord’s filing of a criminal complaint against a tenant, charging him with false swearing before a city rent leveling board, constituted “process” as an element of malicious abuse of process; the criminal complaint triggered a chain of events that summoned the tenant to appear in court under threat of arrest, to appear before a superior court judge to be referred for processing at the county jail for fingerprinting and photographing for a mug shot, and then to await the determination of a grand jury after presentation of a criminal complaint to that body. [Wozniak v. Pennella](#), 373 N.J. Super. 445, 862 A.2d 539 (App. Div. 2004).
- ⁸ [Hough v. Stockbridge](#), 152 Wash. App. 328, 216 P.3d 1077 (Div. 2 2009).
Voluntary agreements do not constitute “process” within the meaning of the tort of abuse of process. [Wise v. Consolidated Edison Co. of New York, Inc.](#), 282 A.D.2d 335, 723 N.Y.S.2d 462 (1st Dep’t 2001).

1 Am. Jur. 2d Abuse of Process § 3

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

A. In General

§ 3. Distinctions from malicious prosecution and malicious use of process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  176

A.L.R. Library

[Necessity and sufficiency of allegations in complaint for malicious prosecution or tort action analogous thereto that defendant or defendants acted without probable cause, 14 A.L.R.2d 264](#)

Trial Strategy

[Malicious Prosecution, 7 Am. Jur. Proof of Facts 2d 181](#)

[Malicious Prosecution, 16 Am. Jur. Trials 205](#)

The action for abuse of process is similar to the action for malicious prosecution in that both actions are based on the imprudent use of the courts;¹ however, they are distinguishable in that malicious prosecution concerns maliciously or wrongfully causing process to issue² while abuse of process concerns the improper use of process after it has been issued.³ Moreover, abuse of process, unlike malicious prosecution, typically focuses on the actions of those prosecuting the case after legal process has been initiated, that is, after probable cause has been established.⁴

The significant distinction between these two causes of action is that in the former, the wrongful act is the commencement of an action without legal justification, and in the latter, it is in the subsequent proceedings, not in the issue of process but in its abuse.⁵ In addition, malice and want of probable cause in procuring issuance of the process, as well as a termination favorable

to the plaintiff, are essential to the maintenance of an action for malicious prosecution⁶ but are generally deemed not essential to the maintenance of an action for abuse of process.⁷

Some jurisdictions use the term “malicious prosecution” when the process involved is criminal and the term “malicious use of process” when a civil process is involved.⁸

Under Maryland law, defendant’s counterclaim about the untoward purposes and methods employed by distributor of pornographic movies in bringing suit against individuals who allegedly illegally downloaded such movies sounded as one for malicious use of process rather than abuse of process; abuse of process claims do not concern whether a complaint was brought, or any court process was issued, in good faith or based on sufficient cause. In other jurisdictions, these terms may be used interchangeably.⁹ In still other jurisdictions, “malicious prosecution” is used to refer to actions involving both civil and criminal processes.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Unlike a malicious prosecution action, an action for abuse of process does not necessarily require proof that the action was brought without probable cause or that the action terminated in favor of the party alleging abuse of process. [I.A.E., Inc. v. Hall](#), 49 N.E.3d 138 (Ind. Ct. App. 2015), transfer denied, 48 N.E.3d 316 (Ind. 2016).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Myers v. Cohen](#), 5 Haw. App. 232, 687 P.2d 6 (1984), judgment rev’d on other grounds, 67 Haw. 389, 688 P.2d 1145 (1984).
Interference with person or property through the use of a provisional remedy is a necessary element of the causes of action for both malicious prosecution and abuse of process. [Niagara Mohawk Power Corp. v. Testone](#), 272 A.D.2d 910, 708 N.Y.S.2d 527 (4th Dep’t 2000).
- ² [Italian Star Line v. U.S. Shipping Board Emergency Fleet Corporation](#), 53 F.2d 359, 80 A.L.R. 576 (C.C.A. 2d Cir. 1931); [White v. Holderby](#), 192 F.2d 722 (5th Cir. 1951); [Dunagin v. City of Oxford, Miss.](#), 489 F. Supp. 763 (N.D. Miss. 1980), rev’d on other grounds, 701 F.2d 335 (5th Cir. 1983), on reh’g, 718 F.2d 738 (5th Cir. 1983); [Willis v. Parker](#), 814 So. 2d 857 (Ala. 2001); [Yoder v. Adriatico](#), 459 So. 2d 449 (Fla. 5th DCA 1984); [Brown v. Robertson](#), 120 Ind. App. 434, 92 N.E.2d 856 (1950); [Raine v. Drasin](#), 621 S.W.2d 895 (Ky. 1981); [Earl v. Winne](#), 14 N.J. 119, 101 A.2d 535 (1953); [Martin v. Parker](#), 150 N.C. App. 179, 563 S.E.2d 216 (2002); [Clermont Environmental Reclamation Co. v. Hancock](#), 16 Ohio App. 3d 9, 474 N.E.2d 357 (12th Dist. Clermont County 1984); [Dietrich Industries, Inc. v. Abrams](#), 309 Pa. Super. 202, 455 A.2d 119 (1982); [Huggins v. Winn-Dixie Greenville, Inc.](#), 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967); [Priest v. Union Agency](#), 174 Tenn. 304, 125 S.W.2d 142 (1939); [Mullins v. Sanders](#), 189 Va. 624, 54 S.E.2d 116 (1949); [Novick v. Becker](#), 4 Wis. 2d 432, 90 N.W.2d 620 (1958).
- ³ [Italian Star Line v. U.S. Shipping Board Emergency Fleet Corporation](#), 53 F.2d 359, 80 A.L.R. 576 (C.C.A. 2d Cir. 1931); [Campbell v. Lyon](#), 26 Fed. Appx. 183 (4th Cir. 2001); [White v. Holderby](#), 192 F.2d 722 (5th Cir. 1951); [Dunagin v. City of Oxford, Miss.](#), 489 F. Supp. 763 (N.D. Miss. 1980), rev’d on other grounds, 701 F.2d 335 (5th Cir. 1983), on reh’g, 718 F.2d 738 (5th Cir. 1983); [Willis v. Parker](#), 814 So. 2d 857 (Ala. 2001); [Yoder v. Adriatico](#), 459 So. 2d 449 (Fla. 5th DCA 1984); [Brown v. Robertson](#), 120 Ind. App. 434, 92 N.E.2d 856 (1950); [Gatlin v. Hartley, Nicholson, Hartley & Arnett, P.A.](#), 29 Kan. App. 2d 318, 26 P.3d 1284 (2001); [Raine v. Drasin](#), 621 S.W.2d 895 (Ky. 1981); [Earl v. Winne](#), 14 N.J. 119, 101 A.2d 535 (1953); [Martin v. Parker](#), 150 N.C. App. 179, 563 S.E.2d 216 (2002); [Clermont Environmental Reclamation Co. v. Hancock](#), 16 Ohio App. 3d 9, 474 N.E.2d 357 (12th Dist. Clermont County 1984); [Dietrich Industries, Inc. v. Abrams](#), 309 Pa. Super. 202, 455 A.2d 119 (1982); [Huggins v. Winn-Dixie](#)

Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967); *Priest v. Union Agency*, 174 Tenn. 304, 125 S.W.2d 142 (1939); *Klein & Associates Political Relations v. Port Arthur Independent School Dist.*, 92 S.W.3d 889 (Tex. App. Beaumont 2002); *Mullins v. Sanders*, 189 Va. 624, 54 S.E.2d 116 (1949); *Whispering Springs Corp. v. Town of Empire*, 183 Wis. 2d 396, 515 N.W.2d 469 (Ct. App. 1994).

Abuse of process, as distinguished from malicious prosecution, arises when a legal proceeding, although set in motion in proper form, becomes perverted to accomplish an ulterior or a wrongful purpose for which it was not designed. *Butera v. Boucher*, 798 A.2d 340 (R.I. 2002).

4 *Hart v. Mannina*, 798 F.3d 578 (7th Cir. 2015).

5 *QSP, Inc. v. Aetna Cas. and Sur. Co.*, 256 Conn. 343, 773 A.2d 906 (2001).

6 As to the particular elements of the tort of malicious prosecution, see Am. Jur. 2d, Malicious Prosecution[[WestlawNext® Search Query](#)].

Although each cause of action should be set forth in separate counts, the same facts can give rise to an action for abuse of process and malicious prosecution. *Franco v. Mudford*, 2002 Mass. App. Div. 63, 2002 WL 539065 (2002), decision aff'd, 60 Mass. App. Ct. 1112, 802 N.E.2d 129 (2004).

7 §§ 8 to 10.

8 *Rushton v. Shea*, 419 F. Supp. 1349, 22 U.C.C. Rep. Serv. 273 (D. Del. 1976); *Cooper v. Public Finance Corp.*, 146 Ga. App. 250, 246 S.E.2d 684 (1978); *Dietrich Industries, Inc. v. Abrams*, 309 Pa. Super. 202, 455 A.2d 119 (1982).

9 *Metro Media Entertainment, LLC v. Steinruck*, 912 F. Supp. 2d 344 (D. Md. 2012) (applying Maryland law); *Golden Commissary Corp. v. Shipley*, 157 A.2d 810 (Mun. Ct. App. D.C. 1960); *Doyle v. Shlensky*, 120 Ill. App. 3d 807, 76 Ill. Dec. 466, 458 N.E.2d 1120 (1st Dist. 1983); *Ash v. Cohn*, 119 N.J.L. 54, 194 A. 174 (N.J. Ct. Err. & App. 1937).

The tort of malicious abuse of process represents an attempt to strike a balance between the interest in protecting litigants' right of access to the courts and the interest in protecting citizens from unfounded or illegitimate applications of the power of the state through misuse of the courts. *Weststar Mortg. Corp. v. Jackson*, 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

10 *Donohoe v. Burd*, 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991) (applying Ohio law).

An action for malicious prosecution is normally the remedy available to a party aggrieved by the wrongful institution of a civil, criminal, or administrative proceeding. *Williams v. City Stores Co.*, 192 A.2d 534 (D.C. 1963).

1 Am. Jur. 2d Abuse of Process § 4

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

A. In General

§ 4. Distinction from false imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  176

False imprisonment is the unlawful restraint by one person of the physical liberty of another.¹ In contrast to an action for abuse of the process of arrest, which may be established only if it is shown that the process was misused in furtherance of an ulterior motive,² the defendant's intention or purpose in detaining a person is immaterial to the maintenance of an action for false imprisonment.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Am. Jur. 2d, False Imprisonment § 1.](#)

² [§ 6.](#)

³ [Wiegand v. Meade, 108 N.J.L. 471, 158 A. 825 \(N.J. Sup. Ct. 1932\).](#)
As to the particular elements of the tort of false imprisonment, see [Am. Jur. 2d, False Imprisonment](#)[\[WestlawNext® Search Query\]](#).

1 Am. Jur. 2d Abuse of Process I B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.


I. Nature and Elements of Action

B. Elements

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  [173](#), [178](#) to [183](#)

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  [173](#), [178](#) to [183](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 5

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 5. General requisites

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  173, 180

A.L.R. Library

[Action for breach of contract as basis of action for malicious prosecution or abuse of process, 87 A.L.R.3d 580](#)

[Institution of confessed judgment proceedings as ground of action for abuse of process or malicious prosecution, 87 A.L.R.3d 554](#)

Forms

Instructions to jury—Definition—Elements of action for abuse of process, see Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

In some jurisdictions, three elements are required to make a showing of abuse of process: (1) the defendant made an illegal and improper perverted use of process, a use neither warranted nor authorized by the process; (2) the defendant had an ulterior or improper motive or purpose in exercising such illegal, perverted or improper use of process; and (3) damage resulted to the plaintiff from the irregularity.¹ Stated otherwise, the elements of an abuse of process claim are: (1) the improper use of the court's process; (2) primarily for an ulterior or improper purpose; and (3) with resulting damage to the plaintiff asserting the misuse.² In other jurisdictions, two fundamental elements are generally recognized as constituting the basis of the tort of abuse of process: (1) a willful act in the use of process not proper in the regular conduct or prosecution of the proceedings; and (2) an ulterior motive or purpose on the part of the person causing the process to issue.³

No liability for abuse of process is incurred where the defendant has done nothing more than pursue a lawsuit to its authorized conclusion regardless of how evil the defendant's motive or intentions might be.⁴

The willful act element of an abuse of process claim can be understood as an obligation imposed on the complaining party to allege that the tortfeasor has confirmed through the tortfeasor's conduct an improper ulterior motive for employing legal process against the plaintiff.⁵

CUMULATIVE SUPPLEMENT

Cases:

In order to prevail on a claim for abuse of process under Ohio law, a plaintiff must demonstrate: (1) that a legal proceeding has been set in motion in proper form and with probable cause; (2) that the proceeding has been perverted in order to attempt to accomplish an ulterior purpose for which it was not designed; and (3) that damages resulted directly from the wrongful use of process. *U.S. Const. Amend. 4*; *Day v. DeLong*, 358 F. Supp. 3d 687 (S.D. Ohio 2019).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ *Vanover v. Cook*, 260 F.3d 1182 (10th Cir. 2001) (applying Kansas law); *Purzel Video GmbH v. Smoak*, 11 F. Supp. 3d 1020 (D. Colo. 2014) (applying Colorado law); *Van Stelton v. Van Stelton*, 994 F. Supp. 2d 986 (N.D. Iowa 2014) (applying Iowa law); *Jones v. Slay*, 61 F. Supp. 3d 806 (E.D. Mo. 2014) (applying Missouri law); *Mocek v. City of Albuquerque*, 3 F. Supp. 3d 1002 (D.N.M. 2014) (applying New Mexico law); *Hardick v. Homol*, 795 So. 2d 1107 (Fla. 5th DCA 2001); *Williamson ex rel. Williamson v. Keith*, 786 So. 2d 390, 155 Ed. Law Rep. 952 (Miss. 2001); *Martinez v. English*, 267 S.W.3d 521 (Tex. App. Austin 2008).
As to ulterior motive or purpose as an element of abuse of process, see § 6.
As to injury or damages, see § 7.
- ² *National Ass'n of Professional Baseball Leagues, Inc. v. Very Minor Leagues, Inc.*, 223 F.3d 1143 (10th Cir. 2000); *Callaway v. Parkwood Village, L.L.C.*, 2000 OK 24, 1 P.3d 1003 (Okla. 2000).
Essential elements of the tort of abuse of process are that: (1) process was used; (2) for an ulterior or illegitimate purpose; (3) resulting in damage. *Vittands v. Sudduth*, 49 Mass. App. Ct. 401, 730 N.E.2d 325 (2000).
- ³ *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228 (4th Cir. 1985); *Pennington v. Dollar Tree Stores, Inc.*, 28 Fed. Appx. 482 (6th Cir. 2002) (applying Kentucky law); *Swanson v. Bixler*, 750 F.2d 810 (10th Cir. 1984); *McCarthy v. Kleindienst*, 741 F.2d 1406, 39 Fed. R. Serv. 2d 1165 (D.C. Cir. 1984); *Osinubepi-Alao v. Plainview Financial Services, Ltd.*, 44 F. Supp. 3d 84 (D.D.C. 2014) (applying District of Columbia law); *Slep-Tone Entertainment Corporation v. Kalamata, Inc.*, 75 F. Supp. 3d 898 (N.D. Ill. 2014) (applying Illinois law); *Surgidev Corp. v. Eye Technology, Inc.*, 625 F. Supp. 800 (D. Minn. 1986); *Ging v. Showtime Entertainment, Inc.*, 570 F. Supp. 1080 (D. Nev. 1983); *Barletta v. Golden Nugget Hotel Casino*, 580 F. Supp. 614 (D.N.J. 1984); *Harvey v. Pincus*, 549 F. Supp. 332 (E.D. Pa. 1982), judgment aff'd, 716 F.2d 890 (3d Cir. 1983); *Warwick Development Co., Inc. v. GV Corp.*, 469 So. 2d 1270 (Ala. 1985); *Greene v. Tinker*, 332 P.3d 21 (Alaska 2014); *Drum v. Bleau, Fox & Associates*, 107 Cal. App. 4th 1009, 132 Cal. Rptr. 2d 602 (2d Dist. 2003) (disapproved of on other grounds by, *Rusheen v. Cohen*, 37 Cal. 4th 1048, 39 Cal. Rptr. 3d 516, 128 P.3d 713 (2006)); *Gause v. First Bank of Marianna*, 457 So. 2d 582 (Fla. 1st DCA 1984); *Myers v. Cohen*, 5 Haw. App. 232, 687 P.2d 6 (1984), judgment rev'd on other grounds, 67 Haw. 389, 688 P.2d 1145 (1984); *Neurosurgery and Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 274 Ill. Dec. 152, 790 N.E.2d 925 (2d Dist. 2003); *Estate of Mayer v. Lax, Inc.*, 998 N.E.2d 238 (Ind. Ct. App. 2013) transfer denied, 2 N.E.3d 686 (Ind. 2014); *Bonnie Braes Farms, Inc. v. Robinson*, 598 S.W.2d 765 (Ky. Ct. App. 1980); *Citizens, Electors & Taxpayers of Tangipahoa Parish v. Layrison*, 449 So. 2d 613 (La. Ct. App. 1st Cir. 1984), writ

denied, 452 So. 2d 170 (La. 1984); *Nader v. Maine Democratic Party*, 2012 ME 57, 41 A.3d 551 (Me. 2012); *Keys v. Chrysler Credit Corp.*, 303 Md. 397, 494 A.2d 200 (1985); *Beecy v. Pucciarelli*, 387 Mass. 589, 441 N.E.2d 1035 (1982); *Seipel v. Olympic Coast Investments*, 2008 MT 237, 344 Mont. 415, 188 P.3d 1027 (2008); *Martin v. Sanford*, 129 Neb. 212, 261 N.W. 136, 100 A.L.R. 179 (1935); *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 503 P.2d 9, 56 A.L.R.3d 483 (1972); *Curiano v. Suozzi*, 63 N.Y.2d 113, 480 N.Y.S.2d 466, 469 N.E.2d 1324 (1984); *Hewes v. Wolfe*, 74 N.C. App. 610, 330 S.E.2d 16 (1985); *Wachter v. Gratech Co., Ltd.*, 2000 ND 62, 608 N.W.2d 279 (N.D. 2000); *Clermont Environmental Reclamation Co. v. Hancock*, 16 Ohio App. 3d 9, 474 N.E.2d 357 (12th Dist. Clermont County 1984); *Food Lion, Inc. v. United Food & Commercial Workers Intern. Union*, 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002); *Givens v. Mullikin ex rel. Estate of McElwaney*, 75 S.W.3d 383 (Tenn. 2002); *Batten v. Abrams*, 28 Wash. App. 737, 626 P.2d 984 (Div. 3 1981); *Strid v. Converse*, 111 Wis. 2d 418, 331 N.W.2d 350 (1983); *Drake v. McCulloh*, 2002 WY 50, 43 P.3d 578 (Wyo. 2002).

The elements of an abuse of process claim are: (1) a willful act in the use of judicial process; (2) for an ulterior purpose not proper in the regular conduct of the proceedings. *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004).

In order to prevail on an abuse of process claim, a plaintiff must show: (1) a legal procedure set in motion in proper form, even with probable cause and ultimate success; (2) the procedure is perverted to accomplish an ulterior purpose for which it was not designed; and (3) a willful act is perpetrated in the use of process which is not proper in the regular conduct of the proceeding. *South Arkansas Petroleum Co. v. Schiesser*, 343 Ark. 492, 36 S.W.3d 317 (2001).

⁴ *Jensen v. Barlas*, 438 F. Supp. 2d 988 (N.D. Iowa 2006) (applying Iowa law); *Romeo v. Jones*, 86 S.W.3d 428 (Mo. Ct. App. E.D. 2002), retransferred to Mo. Ct. of Appeals, (Oct. 22, 2002) and opinion adopted and reinstated after retransfer, (Nov. 4, 2002); *Weststar Mortg. Corp. v. Jackson*, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002); *Schmit v. Klumpyan*, 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 (Ct. App. 2003).

The “improper use” element of an abuse of process claim is not met if the defendant has done nothing more than carry out the process to its authorized conclusion even though with bad intentions. *Marlin Oil Corp. v. Barby Energy Corp.*, 2002 OK CIV APP 92, 55 P.3d 446 (Div. 3 2002).

A claim for abuse of process under Massachusetts law requires proof neither of a termination in the plaintiff’s favor nor want of probable cause. *Lund v. Henderson*, 22 F. Supp. 3d 94 (D. Mass. 2014).

⁵ *Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, 285 P.3d 1157 (Utah 2012).

1 Am. Jur. 2d Abuse of Process § 6

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 6. Ulterior motive or purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  178

The ulterior motive or purpose generally required in an abuse of process action¹ may take the form of coercion to obtain a collateral advantage not properly involved in the proceeding itself,² such as the surrender of property or the payment of money, by the use of the process as a threat or a club;³ there is, in other words, a form of extortion.⁴ However, mere ill will or spite toward the adverse party in a proceeding does not constitute an ulterior or improper motive where the process is used only for the purpose for which it was designed and intended.⁵

Neither retaliation nor a malicious motive is a sufficient collateral objective to satisfy a cognizable claim for abuse of process; rather, an ulterior purpose or objective in facilitating the prosecution is required.⁶

The ulterior purpose element of an abuse of process claim is not satisfied merely by showing that a person commenced litigation knowing it was groundless nor is it satisfied by showing that the defendant acted with an improper motive of vexation, harassment, or annoyance; rather, the ulterior purpose must be to gain some collateral advantage in that the defendant has allegedly tried to extract some advantage by wrongful means.⁷

CUMULATIVE SUPPLEMENT

Cases:

Filing of wrongful foreclosure lawsuit with the motive to delay or prevent the completion of defendant's foreclosure constituted an abuse of judicial process. [Jackson v. Bank of America, N.A.](#), 898 F.3d 1348 (11th Cir. 2018).

Limited liability company (LLC) manager's allegation, that member sued him to obtain something that manager would not give him and to which he was not entitled, failed to state claim for abuse of process under Kentucky law; even if manager's characterization of member's motive was correct, it did not constitute abuse of process as member used civil process for the

purpose for which it was intended. [Griffin v. Jones](#), 170 F. Supp. 3d 956 (W.D. Ky. 2016).

Under North Carolina law, employer did not commit tort of abuse of process when it filed suit against its former employee and his current employer for breach of contract, computer trespass, misappropriation of trade secrets, unfair and deceptive trade practices, conversion, and civil conspiracy, despite employee's contentions that employer used suit to coerce him into executing non-compete agreement and/or non-solicitation agreement ex post facto, absent allegation that employer committed some willful act not proper in proceeding's regular prosecution. [Spirax Sarco, Inc. v. SSI Engineering, Inc.](#), 122 F. Supp. 3d 408 (E.D. N.C. 2015).

Where Chapter 11 debtor, the owner and operator of a farming and outdoor equipment dealership that had sold three tractors and items of farm equipment to buyer, was found to have engaged in abuse of process under North Carolina law by using the threat of its order of attachment and temporary restraining order (TRO) not to put the tractors and equipment in the sheriff's possession until a judge could rule on the merits of its prepetition complaint against buyer and others, but to secure payment from defendants, debtor could not use either the *Noerr-Pennington* doctrine or the First Amendment as a shield from liability; both of those defenses focused on the initiation and legitimate continuation of process, rather than the subsequent misuse of process, and so did not protect debtor. [U.S. Const. Amend. 1. In re Mills International, Inc.](#), 570 B.R. 169, 92 U.C.C. Rep. Serv. 2d 131 (Bankr. E.D. N.C. 2017).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ § 5.

² [Preferred Properties, Inc. v. Indian River Estates, Inc.](#), 276 F.3d 790, 2002 FED App. 0006P (6th Cir. 2002); [Neumann v. Vidal](#), 710 F.2d 856 (D.C. Cir. 1983); [Cardoso v. City of Brockton](#), 62 F. Supp. 3d 179 (D. Mass. 2014) (applying Massachusetts law); [Kirtz v. Wiggin](#), 483 F. Supp. 148 (E.D. Mo. 1980), judgment aff'd on other grounds, 637 F.2d 572 (8th Cir. 1981); [Ion Equipment Corp. v. Nelson](#), 110 Cal. App. 3d 868, 168 Cal. Rptr. 361 (1st Dist. 1980); [Williams v. City Stores Co.](#), 192 A.2d 534 (D.C. 1963); [Myers v. Cohen](#), 5 Haw. App. 232, 687 P.2d 6 (1984), judgment rev'd on other grounds, 67 Haw. 389, 688 P.2d 1145 (1984); [Young v. Motor City Apartments Ltd. Dividend Housing Ass'n No. 1 and No. 2](#), 133 Mich. App. 671, 350 N.W.2d 790 (1984); [R. Rowland & Co., Inc. v. Smith](#), 698 S.W.2d 48 (Mo. Ct. App. S.D. 1985); [Hornstein v. Wolf](#), 109 A.D.2d 129, 491 N.Y.S.2d 183 (2d Dep't 1985), order aff'd, 67 N.Y.2d 721, 499 N.Y.S.2d 938, 490 N.E.2d 857 (1986); [Butera v. Boucher](#), 798 A.2d 340 (R.I. 2002).

An abuse of process may occur when a party uses process to coerce another to do some collateral thing that the person could not be legally and regularly compelled to do. [Salminen v. Morrison & Frampton, PLLP](#), 2014 MT 323, 377 Mont. 244, 339 P.3d 602 (2014).

A threat to bring criminal charges, which was clearly intended to coerce the opponent to settle a civil claim, frustrated civil adjudication and constituted an abuse of judicial process. [Standing Committee on Discipline of U.S. Dist. Court for Southern Dist. of California v. Ross](#), 735 F.2d 1168 (9th Cir. 1984).

The commencement of litigation challenging a proposed subdivision, although groundless, was aimed at defeating the proposal and nothing more; thus, there was no abuse of process since no collateral end was sought. [Cohen v. Hurley](#), 20 Mass. App. Ct. 439, 480 N.E.2d 658 (1985).

³ [Preferred Properties, Inc. v. Indian River Estates, Inc.](#), 276 F.3d 790, 2002 FED App. 0006P (6th Cir. 2002); [Butera v. Boucher](#), 798 A.2d 340 (R.I. 2002); [Pallares v. Seinar](#), 407 S.C. 359, 756 S.E.2d 128 (2014).

⁴ [Baker v. Bank of California, N.A.](#), 282 Cal. Rptr. 22 (App. 4th Dist. 1991); [Bothmann v. Harrington](#), 458 So. 2d 1163 (Fla. 3d DCA 1984); [Montgomery GMC Trucks, Inc. v. Nunn](#), 657 S.W.2d 334 (Mo. Ct. App. S.D. 1983); [Butera v. Boucher](#), 798 A.2d 340 (R.I. 2002); [Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now \(C.L.E.A.N.\)](#), 119 Wash. App. 665, 82 P.3d 1199 (Div. 2 2004), as amended on denial of reconsideration, (Mar. 2, 2004); [Schmit v. Klumphy](#), 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 (Ct. App. 2003).

In order to state a claim for abuse of process, it is not enough that the defendant had bad or malicious intentions or that the defendant acted from spite or with an ulterior motive; rather, there must be an act or threat not authorized by the

process, or the process must be used for an illegitimate aim such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action. [Orange Stones Co. v. City of Reading](#), 87 A.3d 1014 (Pa. Commw. Ct. 2014). "Collateral advantage" or some type of extortion outside of the underlying litigation is not only the type of abuse of process under Pennsylvania law; rather, it is the usual case, in other words, the classic example. [General Refractories Co. v. Fireman's Fund Ins. Co.](#), 337 F.3d 297 (3d Cir. 2003).

A demand for collateral advantage that occurs before the issuance of process may be actionable, for purposes of a malicious abuse of process claim, so long as process does in fact issue at the defendant's behest and as part of the attempted extortion. [Weststar Mortg. Corp. v. Jackson](#), 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

⁵ [Dorak v. Nassau County, State of New York](#), 445 F.2d 1023 (2d Cir. 1971); [General Refractories Co. v. Fireman's Fund Ins. Co.](#), 337 F.3d 297 (3d Cir. 2003) (applying Pennsylvania law); [Sage Intern., Ltd. v. Cadillac Gage Co.](#), 556 F. Supp. 381 (E.D. Mich. 1982); [Bothmann v. Harrington](#), 458 So. 2d 1163 (Fla. 3d DCA 1984); [Holiday Magic, Inc. v. Scott](#), 4 Ill. App. 3d 962, 282 N.E.2d 452 (1st Dist. 1972); [Brown v. Robertson](#), 120 Ind. App. 434, 92 N.E.2d 856 (1950); [Gambocz v. Apel](#), 102 N.J. Super. 123, 245 A.2d 507 (App. Div. 1968); [Farmers Gin Co. v. Ward](#), 1964-NMSC-015, 73 N.M. 405, 389 P.2d 9 (1964); [Bohm v. Holzberg](#), 47 A.D.2d 764, 365 N.Y.S.2d 262 (2d Dep't 1975); [Petrout v. Hale](#), 43 N.C. App. 655, 260 S.E.2d 130 (1979); [Mullins v. Sanders](#), 189 Va. 624, 54 S.E.2d 116 (1949).

Where a lawful end is pursued by appropriate process, incidental motives of spite or greed are not actionable pursuant to an abuse of process claim. [Berry v. Kalyna](#), 7 Fed. Appx. 624 (9th Cir. 2001).

⁶ [Akran v. U.S.](#), 997 F. Supp. 2d 197 (E.D. N.Y. 2014), aff'd, 581 Fed. Appx. 46 (2d Cir. 2014) (applying New York law).

For purposes of abuse of process claims, although the litigant's motive may be important in determining whether there was an ulterior purpose for the use of the process, it still must be established that, viewed objectively, there was an improper use of the process. [American Guarantee and Liability Ins. Company v. King](#), 97 P.3d 161 (Colo. App. 2003).

⁷ [Damon v. Hukowicz](#), 964 F. Supp. 2d 120 (D. Mass. 2013) (applying Massachusetts law).

In order to state a § 1983 claim for abuse of process, a plaintiff must establish that the defendants had an improper purpose in instigating the action and that they aimed to achieve a collateral purpose beyond or in addition to his criminal prosecution. [Morales v. City of New York](#), 752 F.3d 234 (2d Cir. 2014).

Under Missouri law, a claim for abuse of process is not appropriate where the action is confined to its regular function even if the plaintiff had an ulterior motive in bringing the action or if the plaintiff knowingly brought the suit upon an unfounded claim; it is where the claim is brought not to recover on the cause of action stated but to accomplish a purpose for which the process was not designed that there is an abuse of process. [Simms v. Nationstar Mortg., LLC](#), 44 F. Supp. 3d 927 (E.D. Mo. 2014) (applying Missouri law).

1 Am. Jur. 2d Abuse of Process § 7

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 7. Injury or damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  183

A.L.R. Library

[Action for breach of contract as basis of action for malicious prosecution or abuse of process, 87 A.L.R.3d 580](#)

[Institution of confessed judgment proceedings as ground of action for abuse of process or malicious prosecution, 87 A.L.R.3d 554](#)

Although in some jurisdictions a cause of action for abuse of process may be sustained despite the fact that there has been no seizure of the plaintiff's person or property, or that the coercion attempted by the improper use of process was unsuccessful,¹ other jurisdictions require that a plaintiff bringing a claim for abuse of process plead and prove that injury or damages resulted from the irregularity of the process.² In such jurisdictions, mere vexation or harassment are not sufficient losses to give rise to the tort.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ Nienstedt v. Wetzel, 133 Ariz. 348, 651 P.2d 876, 33 A.L.R.4th 635 (Ct. App. Div. 1 1982); Ledford v. Smith, 212 N.C. 447, 193 S.E. 722 (1937); Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967).

² Nichols v. Harbor Venture, Inc., 284 F.3d 857 (8th Cir. 2002) (applying Missouri law); Vanover v. Cook, 260 F.3d 1182 (10th Cir. 2001) (applying Kansas law); Metro Media Entertainment, LLC v. Steinruck, 912 F. Supp. 2d 344 (D. Md. 2012) (applying Maryland law); McCornell v. City of Jackson, Miss., 489 F. Supp. 2d 605 (S.D. Miss. 2006)

(applying Mississippi law); *Donohoe v. Burd*, 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991) (applying Ohio law); *Dempsey v. Denman*, 442 So. 2d 63 (Ala. 1983); *Hardick v. Homol*, 795 So. 2d 1107 (Fla. 5th DCA 2001); *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 852 A.2d 1029 (2004); *Williamson ex rel. Williamson v. Keith*, 786 So. 2d 390, 155 Ed. Law Rep. 952 (Miss. 2001); *Lambert v. Warner*, 379 S.W.3d 849 (Mo. Ct. App. E.D. 2012); *Callaway v. Parkwood Village, L.L.C.*, 2000 OK 24, 1 P.3d 1003 (Okla. 2000); *Hunt v. Baldwin*, 68 S.W.3d 117 (Tex. App. Houston 14th Dist. 2001).

A father's damages for being mistakenly arrested for an offense committed by his son did not result from a supermarket's filing charges that the son wrote an insufficient-funds check, and thus, the father could not recover against the supermarket for abuse of process; rather, the father's damages resulted from mistakes made by the district court clerk's office in acting on the supermarket's correct information. *Thomas v. Marion County*, 652 N.W.2d 183 (Iowa 2002).

Absent any evidence of damages to a father resulting from the failure of county attorneys to dismiss a child-in-need-of-care (CINC) proceeding regarding the father's alleged abuse of his minor child or any ulterior motive on the part of his wife's divorce attorney in pursuing the CINC proceeding, the father could not recover for abuse of process. *Schmeidler v. Drees*, 2003 WL 21948155 (Kan. Ct. App. 2003), unpublished.

A real estate developer could not recover against an excavation company for abuse of process, based upon the excavation company's filing of a mechanics' lien for five times more than it was entitled to be paid under contract, where the developer suffered no damages as a result of the abuse of process. *Wachter v. Gratech Co., Ltd.*, 2000 ND 62, 608 N.W.2d 279 (N.D. 2000).

As to the recovery of damages, see §§ 30, 31.

3

Ion Equipment Corp. v. Nelson, 110 Cal. App. 3d 868, 168 Cal. Rptr. 361 (1st Dist. 1980).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 8

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 8. Malice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  179

Forms

Instruction to jury—Effect on damages of malice or want of probable cause. See Am. Jur. Pleading and Practice Forms, Abuse of Process [[WestlawNext® Search Query](#)]

While in some jurisdictions malice is not a necessary element of the tort of abuse of process,¹ except where punitive or exemplary damages are sought,² in other jurisdictions, proof of malice,³ whether actual or implied,⁴ is required in order to sustain a claim for abuse of process.

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.](#), 770 F.2d 1228 (4th Cir. 1985); [Martinez v. Continental Enterprises](#), 697 P.2d 789 (Colo. App. 1984), judgment aff'd in part, rev'd in part on other grounds, 730 P.2d 308 (Colo. 1986); [Gause v. First Bank of Marianna](#), 457 So. 2d 582 (Fla. 1st DCA 1984); [Palmer Ford, Inc. v. Wood](#), 65 Md. App. 390, 500 A.2d 1055 (1985); [LaMantia v. Redisi](#), 118 Nev. 27, 38 P.3d 877 (2002); [Morphy v. Shipley](#), 351 Pa. 425, 41 A.2d 671 (1945); [Fite v. Lee](#), 11 Wash. App. 21, 521 P.2d 964, 97 A.L.R.3d 678 (Div. 2 1974). Regular use of process cannot constitute abuse even though the user was actuated by a wrongful motive, purpose, or intent or by malice. [Waguespack, Seago and Carmichael \(A PLC\) v. Lincoln](#), 768 So. 2d 287 (La. Ct. App. 1st Cir. 2000). Where process is used for a purpose for which it was not intended, there is an action for abuse of process even if the instigator bears no malice or harbors no grudges against the target. [Schmit v. Klumpyan](#), 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 (Ct. App. 2003).

² § 31.

³ U.S. Steel, LLC, v. Tieco, Inc., 261 F.3d 1275, 57 Fed. R. Evid. Serv. 1350 (11th Cir. 2001) (Alabama law); Willis v. Parker, 814 So. 2d 857 (Ala. 2001); Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund, 24 Cal. 4th 800, 102 Cal. Rptr. 2d 562, 14 P.3d 234 (2001); Howell v. Davis, 58 A.D.2d 852, 396 N.Y.S.2d 866 (2d Dep't 1977), order aff'd, 43 N.Y.2d 874, 403 N.Y.S.2d 496, 374 N.E.2d 393 (1978); Robert & St. John Motor Co. v. Bumpass, 65 S.W.2d 399 (Tex. Civ. App. Eastland 1933), writ dismissed.

To sustain an action for malicious abuse of process, there must be both a misuse of the power of the judiciary by a litigant and a malicious motive. Weststar Mortg. Corp. v. Jackson, 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

⁴ Lewis v. Burdine, 240 Ark. 821, 402 S.W.2d 398 (1966); Slaughter v. Legal Process & Courier Service, 162 Cal. App. 3d 1236, 209 Cal. Rptr. 189 (1st Dist. 1984).

As to what constitutes proof of malice, see § 27.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 9

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 9. Want of probable cause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  182

A.L.R. Library

[Necessity and sufficiency of allegations in complaint for malicious prosecution or tort action analogous thereto that defendant or defendants acted without probable cause, 14 A.L.R.2d 264](#)

Forms

Instructions to jury—Effect on damages of malice or want of probable cause. See Am. Jur Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

Generally, want of probable cause need not be established in order to state a claim for abuse of process.¹ However, facts tending to show that the person commencing the litigation knew or had reason to know that the claim was groundless are relevant to show that the process was used for an ulterior purpose.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Jennings v. Shuman, 567 F.2d 1213 \(3d Cir. 1977\); U.S. v. Chatham, 415 F. Supp. 1214 \(N.D. Ga. 1976\); Wal-Mart](#)

Stores, Inc. v. Binns, 341 Ark. 157, 15 S.W.3d 320 (2000); *Hall v. Field Enterprises, Inc.*, 94 A.2d 479 (Mun. Ct. App. D.C. 1953); *Coplea v. Bybee*, 290 Ill. App. 117, 8 N.E.2d 55 (3d Dist. 1937); *Ahrens v. Ahrens*, 386 N.W.2d 536 (Iowa Ct. App. 1986); *Palmer Ford, Inc. v. Wood*, 65 Md. App. 390, 500 A.2d 1055 (1985); *Gutierrez v. Massachusetts Bay Transp. Authority*, 437 Mass. 396, 772 N.E.2d 552 (2002); *Three Lakes Ass'n v. Whiting*, 75 Mich. App. 564, 255 N.W.2d 686 (1977); *Pic-Walsh Freight Co. v. Cooper*, 618 S.W.2d 449 (Mo. Ct. App. E.D. 1981); *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002); *Station Associates, Inc. v. Long Island R. Co.*, 18 Misc. 2d 1092, 188 N.Y.S.2d 435 (Sup 1959); *Ellis v. Wellons*, 224 N.C. 269, 29 S.E.2d 884 (1944); *Reynolds v. Givens*, 72 Or. App. 248, 695 P.2d 946 (1985); *Strid v. Converse*, 111 Wis. 2d 418, 331 N.W.2d 350 (1983).

Among the elements of abuse of process is the element that a legal proceeding has been set in motion in proper form and with probable cause. *Smith v. A.B. Bonded Locksmith, Inc.*, 143 Ohio App. 3d 321, 757 N.E.2d 1242 (1st Dist. Hamilton County 2001).

Under Nevada law, it is not necessary to show malice or want of probable cause to recover for abuse of process. *In re Black*, 487 B.R. 202 (B.A.P. 9th Cir. 2013) (applying Nevada law).

In an action for abuse of process, it is not necessary to show either malice or want of probable cause nor that the proceeding had terminated, and it is immaterial whether such proceeding was baseless or not; rather, to establish a claim for abuse of process, a claimant must demonstrate first, an ulterior purpose, and second, an act in the use of process not proper in the regular prosecution of the proceedings. *Puttuck v. Gendron*, 2008 UT App 362, 199 P.3d 971 (Utah Ct. App. 2008).

For purposes of an action for malicious abuse of process in which a plaintiff claims the defendant filed an action against that plaintiff without probable cause, "probable cause" is defined as the reasonable belief, founded on known facts established after a reasonable prefiling investigation, that a claim can be established to the satisfaction of a court or jury. *Weststar Mortg. Corp. v. Jackson*, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

²

Fishman v. Brooks, 396 Mass. 643, 487 N.E.2d 1377 (1986).

A misuse of process may be established by showing either a lack of probable cause or a procedural impropriety. *Weststar Mortg. Corp. v. Jackson*, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

As to ulterior motive as an element of the tort of abuse of process, see § 6.

1 Am. Jur. 2d Abuse of Process § 10

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

I. Nature and Elements of Action

B. Elements

§ 10. Termination of proceeding in which process is issued

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  181

A.L.R. Library

[Necessity and permissibility of raising claim for abuse of process by reply or counterclaim in same proceeding in which abuse occurred—state cases, 82 A.L.R.4th 1115](#)

[Action for breach of contract as basis of action for malicious prosecution or abuse of process, 87 A.L.R.3d 580](#)

Although the common-law rule is that an action for abuse of process may not be instituted by a party who has not been absolved of guilt,¹ favorable termination of prior proceedings is not an element of a cause of action for abuse of process;² thus, it is not ordinarily necessary to establish that the original action in which the process issued has terminated in favor of the plaintiff.³

While abuse of process claims do not include favorable termination as an essential element, the cause of action is still considered premature until the underlying litigation has been completed.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Bolanos v. Gulf Oil Corp., 502 F. Supp. 689 \(W.D. Pa. 1980\)](#), [aff'd, 681 F.2d 804 \(3d Cir. 1982\)](#).

² [Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 \(1994\)](#) (further holding that an impugning of prior proceedings is not one of the consequences of an action for abuse of process).

³ Chatterton v. Janousek, 280 F.2d 719 (D.C. Cir. 1960); Chrysler Corp. v. Fedders Corp., 540 F. Supp. 706, 35 Fed. R. Serv. 2d 513 (S.D. N.Y. 1982); Ransome v. Mimms, 320 F. Supp. 1110 (D.S.C. 1971) (applying South Carolina law); Dempsey v. Denman, 442 So. 2d 63 (Ala. 1983); Williams v. City Stores Co., 192 A.2d 534 (D.C. 1963); Taylor v. Greiner, 156 Ga. App. 663, 275 S.E.2d 737 (1980), *aff'd* in part on other grounds, *rev'd* in part on other grounds, 247 Ga. 526, 277 S.E.2d 13 (1981); Ross v. Honigman, Miller, Schwartz and Cohn, 70 Mich. App. 662, 247 N.W.2d 581 (1976); Moffett v. Commerce Trust Co., 283 S.W.2d 591 (Mo. 1955); Ash v. Cohn, 119 N.J.L. 54, 194 A. 174 (N.J. Ct. Err. & App. 1937); Barnes v. Continental Acceptance Corp., 4 Ohio Op. 3d 232 (Ct. App. 8th Dist. Cuyahoga County 1977); Dietrich Industries, Inc. v. Abrams, 309 Pa. Super. 202, 455 A.2d 119 (1982); Mullins v. Sanders, 189 Va. 624, 54 S.E.2d 116 (1949); Gem Trading Co., Inc. v. Cudahy Corp., 92 Wash. 2d 956, 603 P.2d 828 (1979); Brownsell v. Klawitter, 102 Wis. 2d 108, 306 N.W.2d 41 (1981).

An abuse of process action may be maintained as a counterclaim when directed against process served in the pending main action. *Blue v. Weinstein*, 381 So. 2d 308 (Fla. 3d DCA 1980).

⁴ *MacDermid, Inc. v. Leonetti*, 158 Conn. App. 176, 118 A.3d 158 (2015).

Under New York law, favorable termination is not element of abuse of process claim, and accrual of cause of action for abuse of process need not await termination of action in claimant's favor. *Pinter v. City of New York*, 976 F. Supp. 2d 539 (S.D. N.Y. 2013), certification denied, (Nov. 25, 2013) (applying New York law).

1 Am. Jur. 2d Abuse of Process II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

A. In General

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  192

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 11

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

A. In General

§ 11. Institution and prosecution of civil action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

A.L.R. Library

[Action for breach of contract as basis of action for malicious prosecution or abuse of process, 87 A.L.R.3d 580](#)

[Institution of confessed judgment proceedings as ground of action for abuse of process or malicious prosecution, 87 A.L.R.3d 554](#)

[Construction and application of Federal Tort Claims Act provision \(28 U.S.C.A. sec. 2680\(h\)\) excepting from coverage claims arising out of false imprisonment, false arrest, malicious prosecution, or abuse of process, 152 A.L.R. Fed. 605](#)

Forms

[Complaint, petition, or declaration—Suit and garnishment of wages in foreign jurisdiction to defeat right to local wage exemption—Against creditor and attorney. See Am. Jur. Pleading and Practice Forms, Abuse of Process \[WestlawNext® Search Query\]](#)

Abuse of process contemplates some overt act done in addition to the initiating of the suit; thus, the mere filing or maintenance of a lawsuit, even for an improper purpose, is not a proper basis for an abuse of process action.¹ Generally, therefore, no right of action exists for damages resulting from the institution and prosecution of a civil action if the action is confined to its regular and legitimate function in relation to the cause of action stated in the complaint² even if the plaintiff had an ulterior motive in bringing the action³ or if the plaintiff knowingly brought suit upon an unfounded claim.⁴ However, if

the suit is brought not to recover on the cause of action stated in the complaint but to accomplish a purpose for which the process was not designed, there is an abuse of process.⁵

A litigant's mere failure to settle or refusal to make a settlement offer cannot constitute abuse of process.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Spirax Sarco, Inc. v. SSI Engineering, Inc.](#), 2015 WL 4723609 (E.D. N.C. 2015) (applying North Carolina law); [Greene v. Tinker](#), 332 P.3d 21 (Alaska 2014).
Under the tort of malicious abuse of process, there must be a misuse of process by the defendant beyond the mere initiation of proceedings against the plaintiff. [Weststar Mortg. Corp. v. Jackson](#), 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).
The mere threat of meritless or frivolous litigation does not constitute the tort of abuse of process or the tort of malicious use of process; rather, these torts require the actual pursuit of litigation to be applicable. [State v. Rendelman](#), 404 Md. 500, 947 A.2d 546 (2008).
- ² [Haynes v. Coleman](#), 30 So. 3d 420, 255 Ed. Law Rep. 469 (Ala. Civ. App. 2009); [Colorado Community Bank v. Hoffman](#), 2013 COA 146, 338 P.3d 390 (Colo. App. 2013), cert. denied, 2014 WL 4700646 (Colo. 2014); [Herring v. Citizens Bank & Trust Co.](#), 21 Md. App. 517, 321 A.2d 182, 87 A.L.R.3d 527 (1974); [Elliott v. Warwick Stores, Inc.](#), 329 Mass. 406, 108 N.E.2d 681 (1952); [Williams v. HSBC Bank USA, N.A.](#), 467 S.W.3d 836 (Mo. Ct. App. S.D. 2015); [Farmers Gin Co. v. Ward](#), 1964-NMSC-015, 73 N.M. 405, 389 P.2d 9 (1964); [Manufacturers & Jobbers Finance Corporation v. Lane](#), 221 N.C. 189, 19 S.E.2d 849 (1942); [Robert & St. John Motor Co. v. Bumpass](#), 65 S.W.2d 399 (Tex. Civ. App. Eastland 1933), writ dismissed.
In order to show abuse of process under Kansas law, there must be an existence of an ulterior purpose, and there must be an act in the use of such process not proper in the regular prosecution of the proceeding; no liability accrues for abuse of process where the defendant institutes a lawsuit to obtain damages or a collection procedure to recover a debt even though the process is instituted with bad intentions or without probable cause. [Vanover v. Cook](#), 260 F.3d 1182 (10th Cir. 2001).
- ³ [Slaff v. Slaff](#), 151 F. Supp. 124 (S.D. N.Y. 1957); [Silver v. Gold](#), 211 Cal. App. 3d 17, 259 Cal. Rptr. 185 (2d Dist. 1989); [Edmonds v. Delta Democrat Pub. Co.](#), 230 Miss. 583, 93 So. 2d 171 (1957).
The mere institution of a legal proceeding, even with a malicious motive, does not constitute an abuse of process. [Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now \(C.L.E.A.N.\)](#), 119 Wash. App. 665, 82 P.3d 1199 (Div. 2 2004), as amended on denial of reconsideration, (Mar. 2, 2004).
- ⁴ [Hall v. Hollywood Credit Clothing Co.](#), 147 A.2d 866 (Mun. Ct. App. D.C. 1959); [Moffett v. Commerce Trust Co.](#), 283 S.W.2d 591 (Mo. 1955).
Although initiating a meritless claim for an improper purpose can expose a party to damages for malicious prosecution, the mere initiation of a lawsuit, even for an improper purpose, does not support a claim for abuse of process. [Ramona Unified School Dist. v. Tsiknas](#), 135 Cal. App. 4th 510, 37 Cal. Rptr. 3d 381, 205 Ed. Law Rep. 498 (4th Dist. 2005).
- ⁵ [Harmon v. Berry](#), 776 F.2d 259 (11th Cir. 1985); [Spellens v. Spellens](#), 49 Cal. 2d 210, 317 P.2d 613 (1957); [Hall v. Field Enterprises, Inc.](#), 94 A.2d 479 (Mun. Ct. App. D.C. 1953); [Station Associates, Inc. v. Long Island R. Co.](#), 18 Misc. 2d 1092, 188 N.Y.S.2d 435 (Sup 1959).
Allegations that defendants used a counterclaim in an automobile collision action in order to "blackmail" the plaintiffs into dropping their legitimate suit stated a cause of action for abuse of process. [Torok v. Yost](#), 176 Ga. App. 149, 335 S.E.2d 419 (1985), judgment aff'd, 256 Ga. 92, 344 S.E.2d 414 (1986).
Use of civil litigation as a weapon to damage another's business may give rise to a cause of action for abuse of process. [Leigh Furniture and Carpet Co. v. Isom](#), 657 P.2d 293 (Utah 1982) (overruled on other grounds by, [Eldridge v. Johndrow](#), 2015 UT 21, 345 P.3d 553 (Utah 2015)).
As to a debt collector's liability for threatening to bring suit for nonpayment of a debt, see § 16.
- ⁶ [Crackel v. Allstate Ins. Co.](#), 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 12

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

A. In General

§ 12. Misuse of discovery or deposition procedures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

A.L.R. Library

[Abuse of process action based on misuse of discovery and deposition procedures after commencement of civil action without seizure of person or property, 33 A.L.R.4th 650](#)

An action for abuse of process may lie for the misuse of discovery or deposition procedures, such as the noticing of depositions and various motions to compel production.¹ Specifically, abuse of process in the civil discovery context may lie when: (1) the party who employs the process of a court specifically and primarily intends to increase the burden and expense of litigation to the other side; and (2) the use of that process cannot otherwise be said to be for the legitimate or reasonably justifiable purposes of advancing the party's interests in the ongoing litigation.² However, there must be an allegation of an ulterior purpose and an act in furtherance of such purpose; the use of discovery procedures will not sustain an action for abuse of process if they are used in a manner that is proper in the regular conduct of the proceeding.³

A secured creditor neither intended to harm lenders without excuse or justification through its use of discovery or used discovery in a perverted manner to obtain a collateral objective, and thus, the secured creditor was not liable for abuse of process in a secured creditor's action for conversion and unjust enrichment.⁴ Moreover, a defendant did not subpoena a plaintiff for deposition in an underlying action in order to obtain any collateral advantage, and thus, the subpoena could not support the plaintiff's subsequent abuse of process claim even if the defendant had intended to annoy and harass the plaintiff; the subpoena had been used for its intended purpose to require the plaintiff's presence at a deposition in the underlying action.⁵

Footnotes

- ¹ [Thornton v. Rhoden](#), 245 Cal. App. 2d 80, 53 Cal. Rptr. 706, 23 A.L.R.3d 1152 (2d Dist. 1966) (stating that although the giving of a notice that a deposition will be taken is not a “process” in the strictest sense of the word, in a proper case, an abuse of the powers a litigant derives from the taking of a deposition on proper notice can give such notice the status of “process” for the purpose of the tort of abuse of process).
- ² [Givens v. Mullikin ex rel. Estate of McElwaney](#), 75 S.W.3d 383 (Tenn. 2002) (stating that when the civil discovery procedures are used with the specific and malicious intent to weaken the resolve of the other party, then one may rightfully claim that the procedures are being used to accomplish some end which is without the regular purview of the process).
- ³ [Italian Star Line v. U.S. Shipping Board Emergency Fleet Corporation](#), 53 F.2d 359, 80 A.L.R. 576 (C.C.A. 2d Cir. 1931); [Young v. Motor City Apartments Ltd. Dividend Housing Ass’n No. 1 and No. 2](#), 133 Mich. App. 671, 350 N.W.2d 790 (1984).
An attorney did not abuse process by obtaining medical records of a former litigant in her tort action against the attorney’s client; the litigant had placed at issue her emotional and physical condition by claiming emotional distress and physical consequences, and the records were obtained through a valid method of discovery. [Alexandru v. Dowd](#), 79 Conn. App. 434, 830 A.2d 352 (2003).
Criminal defense attorney, who obtained a former mental patient’s medical records pursuant to subpoena in a prosecution in which the patient was a complainant, did not maliciously abuse process where there was no evidence that the attorney acted with an ulterior purpose or that his use of process was not proper in the proceeding. [Karpowicz v. Hyles](#), 247 Ga. App. 292, 543 S.E.2d 51 (2000).
- ⁴ [National Bank of Geneva v. Case Credit Corp.](#), 37 A.D.3d 1169, 828 N.Y.S.2d 749 (4th Dep’t 2007).
Although a father’s service of a subpoena duces tecum on a hospital, seeking new husband/stepfather’s mental health records without giving notice required by the discovery rules to the mother and stepfather, was a violation of the rules and sanctionable conduct in a custody proceeding, the father’s conduct could not support a separate claim for abuse of process where the subpoenaed records were discoverable, relevant, and admissible on the issue of the home environment of the parties’ children. [Watters v. Dinn](#), 633 N.E.2d 280 (Ind. Ct. App. 1994).
- ⁵ [Fiorenzano v. Lima](#), 982 A.2d 585 (R.I. 2009).

1 Am. Jur. 2d Abuse of Process § 13

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

A. In General

§ 13. Seizure of property under legal process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

Forms

Answer—Defense—Failure to file wage exemption affidavit. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

Pleading and practice forms, Attachment and execution. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

Use of legal process in the seizure of property in order to harass or injure the owner or person in possession¹ constitutes an actionable abuse of process as does the use of the process in an attempt to enforce payment of a judgment known to be false, fraudulent, or nonexistent.² Abuse in the seizure of property may also consist of doing something not warranted by the terms of the process, or of doing something in excess of that which is warranted,³ such as seizing more property than is known to be required to satisfy the debtor's claim,⁴ or knowingly seizing property that does not belong to the debtor.⁵

An elder care social worker was protected by sovereign immunity from liability for any negligent act in freezing a patient's assets, after it was suspected that the patient's son and husband were abusing the patient, in a defamation, malicious prosecution, and abuse of process action brought by the patient's son; the filing of a motion to freeze assets was uniquely related to the social worker's employment, and the allegations contained within the motion to freeze assets were based upon her reasonable belief as a social worker.⁶

Encumbrances on property may make it difficult for property to be sold, but that circumstance, without more, does not amount to an abuse of the attachment process.⁷

Footnotes

- ¹ [Pittsburg, J., E. & E. R. Co. v. Wakefield Hardware Co.](#), 138 N.C. 174, 50 S.E. 571 (1905).
An attachment order, issued ostensibly to collect brokerage commissions, but in fact to prevent the plaintiff from transferring realty so that the defendant might obtain it for himself, constituted abuse of process. [Malone v. Belcher](#), 216 Mass. 209, 103 N.E. 637 (1913).
- ² [Shipe v. Schenk](#), 158 A.2d 910 (Mun. Ct. App. D.C. 1960); [Little v. Sowers](#), 167 Kan. 72, 204 P.2d 605 (1949).
A cause of action for civil abuse of process under Maryland law requires that the plaintiff establish that an arrest of the person or a seizure of property of the plaintiff resulted from the abuse of process. [Metro Media Entertainment, LLC v. Steinruck](#), 912 F. Supp. 2d 344 (D. Md. 2012) (applying Maryland law).
- ³ [Ludwick v. Penny](#), 158 N.C. 104, 73 S.E. 228 (1911).
Allegations that the defendants used an order of seizure in order to force the plaintiffs into buying a defendant's equipment at an unreasonable price was sufficient to state a claim for abuse of process. [Four Star Stage Lighting, Inc. v. Merrick](#), 56 A.D.2d 767, 392 N.Y.S.2d 297 (1st Dep't 1977).
- ⁴ [Nevada Credit Rating Bureau, Inc. v. Williams](#), 88 Nev. 601, 503 P.2d 9, 56 A.L.R.3d 483 (1972) (holding that a creditor's attachment of a debtor's equipment with a value far in excess of the alleged debt, and the creditor's refusal to release any of the equipment, was abuse of process).
Garnishment by a child support obligee to collect judgments she obtained was not an abuse of process but rather was precisely the purpose of Kansas' garnishment procedure although the obligee garnished over 25% more than the amount to which she was ultimately entitled. [Vanover v. Cook](#), 260 F.3d 1182 (10th Cir. 2001).
- ⁵ [Spalding v. Allred](#), 23 Utah 354, 64 P. 1100 (1901) (property of several cotenants).
A bank's lawful attachment of property became an abuse of process when the bank, after receiving proof that the sellers had no equity in the property to attach, nevertheless maintained the attachment in order to coerce a settlement payment from other interested parties, including prospective purchasers. [Baker v. Bank of California, N.A.](#), 282 Cal. Rptr. 22 (App. 4th Dist. 1991).
- ⁶ [Toth v. England](#), 348 Ill. App. 3d 378, 284 Ill. Dec. 136, 809 N.E.2d 702 (5th Dist. 2004).
State court action by majority shareholders of a dairy against the purchaser of the dairy, and the shareholders' execution of a prejudgment attachment, did not constitute abuse of process under Connecticut law, absent sufficient evidence that the shareholders used the legal process primarily to accomplish a purpose for which it was not designed. [T.F.T.F. Capital Corp. v. Marcus Dairy, Inc.](#), 312 F.3d 90 (2d Cir. 2002).
- ⁷ [Millennium Equity Holdings, LLC v. Mahlowitz](#), 456 Mass. 627, 925 N.E.2d 513 (2010).

1 Am. Jur. 2d Abuse of Process § 14

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

A. In General

§ 14. Misuse or improper care of seized property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

An action for abuse of process will lie to recover damages for loss or damage to, or destruction of, property seized under a lawful writ, due to the misuse,¹ improper care,² or other failure to exercise the diligence necessary for the protection and preservation of such property on the part of a person having custody of the seized property.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Bradshaw v. Frazier](#), 113 Iowa 579, 85 N.W. 752 (1901).

² [Wood v. Bailey](#), 144 Mass. 365, 11 N.E. 567 (1887).

³ [State, to Use of Henderson, v. Clark](#), 41 Del. 246, 20 A.2d 127, 138 A.L.R. 704 (1941); [Price v. Pace](#), 50 Idaho 353, 296 P. 189 (1931).
As to a sheriff's liability for care and custody of property if properly seized under legal process, see Am. Jur. 2d, Sheriffs, Police and Constables [[WestlawNext® Search Query](#)].

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process II B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

B. Criminal Proceedings; Civil or Criminal Arrest

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  192

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 15

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

B. Criminal Proceedings; Civil or Criminal Arrest

§ 15. Proceedings and arrest; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

Forms

Pleading and practice forms, Abuse of process, Criminal and civil arrest. See Am. Jur. Pleading and Practice Forms, Abuse of Process [[WestlawNext® Search Query](#)]

A person who makes use of a criminal process or who secures the arrest and detention of another under a lawful warrant, without any act amounting to misuse or oppression, is not guilty of an abuse of process¹ even if the person has an ulterior motive in taking such action.² Furthermore, if criminal process is used for its intended purpose, the mere fact that it has some other collateral effect does not render the action an abuse of process.³ Thus, the entirely justified prosecution of another on a criminal charge does not become abuse of process merely because the instigator dislikes the accused and enjoys doing the accused harm.⁴

The tort of abuse of process occurs when a party has willfully misused criminal or civil process against another party for a purpose different than the proceeding's intended purpose and thereby caused that party damage, e.g., arrest, seizure of property, economic injury.⁵ There was no evidence that school security officers participated in the prosecution of an arrestee to compel him to refrain from asserting his rights against them or do any other collateral thing that he could not have been legally compelled to do as required for arrestee to establish a claim of abuse of process based on the initiation of a criminal proceeding against him.⁶ Moreover, a city police sergeant did not engage in procedural impropriety when he brought claims of criminal libel, harassment, and stalking against arrestee as would support arrestee's claim against sergeant for malicious-abuse-of-process under New Mexico law.⁷

However, where the criminal process, or civil or criminal arrest, is used to effect an object not within its scope, there is an abuse of process for which an action will lie,⁸ as, for example, where a warrant of arrest is used to extort money⁹ or other

property,¹⁰ or to compel the signing of a paper, the giving up of a claim,¹¹ or the doing of some other act in accordance with the wishes of those who have control of the prosecution.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Brown v. Robertson](#), 120 Ind. App. 434, 92 N.E.2d 856 (1950).
- ² [Smith v. Nelson](#), 255 Ark. 641, 501 S.W.2d 769 (1973); [Gambocz v. Apel](#), 102 N.J. Super. 123, 245 A.2d 507 (App. Div. 1968).
Under New York law, a city employee accused of receiving an unlawful gratuity could not state an abuse of process claim against city investigators based upon an allegation that the investigators were driven by a retaliatory motive to prosecute following the employee's refusal to cooperate where: (1) the investigators had probable cause for believing that the employee had committed a crime; and (2) there was no evidence that the investigators were attempting to attain an objective outside the legitimate ends of the process. [Coleman v. City of New York](#), 49 Fed. Appx. 342 (2d Cir. 2002).
- ³ [Roska ex rel. Roska v. Peterson](#), 328 F.3d 1230 (10th Cir. 2003) (applying Utah law).
Under Kentucky law, an arrestee, against whom shoplifting charges were dropped in exchange for a stipulation that probable cause existed for her arrest, could not prove the tort of abuse of process against store owners where: (1) the arrestee had stipulated to probable cause, so she could not establish that the allegations against her were born of an ulterior motive; and (2) even if the store owners had bad intentions, they only used the legal process to effect the intended purpose of prosecuting suspected shoplifters. [Pennington v. Dollar Tree Stores, Inc.](#), 28 Fed. Appx. 482 (6th Cir. 2002).
An usher for a baseball team failed to establish that a concessions services supplier and its human resources director willfully used a criminal prosecution against the usher for theft for any ulterior purpose, as necessary to maintain a claim for abuse of process; the theft charge arose out of allegations against the usher that she had participated in selling frozen yogurt in previously used disposable cups she had collected, the supplier would certainly strive to end employee theft and alleged acts that would pose a health risk, and there was no showing that the goal of the supplier and director was to bring about the usher's termination from employment for the baseball team for its own sake. [Carter v. Aramark Sports and Entertainment Services, Inc.](#), 153 Md. App. 210, 835 A.2d 262 (2003).
- ⁴ [Schmit v. Klumphy](#), 2003 WI App 107, 264 Wis. 2d 414, 663 N.W.2d 331 (Ct. App. 2003).
- ⁵ [State v. Rendelman](#), 404 Md. 500, 947 A.2d 546 (2008).
- ⁶ [Green v. Missouri](#), 734 F. Supp. 2d 814 (E.D. Mo. 2010), *aff'd*, 676 F.3d 748, 278 Ed. Law Rep. 814 (8th Cir. 2012) (applying Missouri law).
- ⁷ [Mata v. Anderson](#), 685 F. Supp. 2d 1223 (D.N.M. 2010), *aff'd*, 635 F.3d 1250 (10th Cir. 2011) (applying New Mexico law).
A single postarrest telephone call from a bank to a customer who retained funds withdrawn after the deposit of a check subsequently discovered to be counterfeit, telling the customer that she could still repay the bank's money "if [she] like[d]," did not constitute coercive action or an effort to extort as required to support the customer's claim of abuse of process based upon the customer's prosecution on a theft charge. [Brooks v. First State Bank, N.A.](#), 2010 Ark. App. 342, 374 S.W.3d 846 (2010).
- ⁸ [Wood v. Bailey](#), 144 Mass. 365, 11 N.E. 567 (1887).
- ⁹ [George v. Leonard](#), 169 F.2d 177 (C.C.A. 4th Cir. 1948); [McGann v. Allen](#), 105 Conn. 177, 134 A. 810 (1926); [Shatz v. Paul](#), 7 Ill. App. 2d 223, 129 N.E.2d 348 (1st Dist. 1955).
- ¹⁰ [Hoppe v. Klapperich](#), 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 (1947).
- ¹¹ [Foy v. Barry](#), 87 A.D. 291, 84 N.Y.S. 335 (1st Dep't 1903).
- ¹² [Wood v. Palmer Ford, Inc.](#), 47 Md. App. 692, 425 A.2d 671 (1981); [Earl v. Winne](#), 34 N.J. Super. 605, 112 A.2d 791 (County Ct. 1955).

When a malicious abuse of process claim is predicated on a criminal prosecution, the evidence must show that a complainant took an active part in instigating or encouraging the prosecution before the complainant may be held liable. [Weststar Mortg. Corp. v. Jackson](#), 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

Under Alabama law, a steel company which had participated in the state attorney general's criminal investigation into the billing practices of an equipment vendor from which the company had purchased supplies was not responsible for issuance of, and thus did not abuse the process of, a criminal search warrant that was issued for the vendor's premises; while the steel company cooperated with the investigation both before and after the issuance of the warrant, it did not control or influence, or even participate in, the decision to seek and execute the warrant. [U.S. Steel, LLC, v. Tieco, Inc.](#), 261 F.3d 1275, 57 Fed. R. Evid. Serv. 1350 (11th Cir. 2001) (applying Alabama law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 16

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

II. Actionable Abuses of Particular Processes

B. Criminal Proceedings; Civil or Criminal Arrest

§ 16. Use of criminal process to enforce collection of debt

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  192

A.L.R. Library

[Medical-malpractice countersuits](#), 61 A.L.R.5th 307

[Use of criminal process to collect debt as abuse of process](#), 27 A.L.R.3d 1202

Trial Strategy

[Proof Under the Fair Debt Collection Practices Act](#), 104 Am. Jur. Proof of Facts 3d 1

Forms

Complaint, petition, or declaration—Arrest on criminal charge—To compel payment of debt—Conspiracy between creditor and officer. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

Complaint, petition, or declaration—Arrest on criminal charge—To compel payment of debt—False charge of swindling by worthless check. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

Complaint, petition, or declaration—Arrest on criminal charge—To compel payment of money allegedly due employer and to jeopardize union grievance procedure—By cashier accused of switching price tags of items purchased from

employer. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

The use of a court's criminal process in an effort to collect a civil debt will support an action for abuse of process.¹ Generally, however, such use of criminal process will not constitute an abuse of process unless the defendant has undertaken some action—other than the mere issuance of a warrant and the causing of the plaintiff's arrest—which amounts to a misuse or abuse of that process after it has been issued.² Moreover, where process is used for its proper purpose, the mere fact that such use may incidentally and indirectly exert pressure for the collection of a debt does not make it an abuse.³

A claim for abuse of process did not lie for a creditor's and debt collector's actions in an attempt to execute on a judgment that complied with execution procedures.⁴ Moreover, a consumer's complaint against a debt collector and its law firm stated a claim for abuse of process by alleging that the defendants submitted deceptive documents to the court in an attempt to collect a debt they knew they were not owed and which was not otherwise legally obtainable.⁵ A creditor's desire to collect a debt owed to it, when it went to the authorities after it was unable to contact the debtor with the contact information she had provided, did not satisfy the ulterior-purpose element of the tort of abuse of process; although the information that the debtor gave the creditor may have been accurate, when the creditor was unsuccessful in contacting the debtor, it was legitimately concerned that the debtor's suspected unlawful behavior would prevent it from collecting its debt.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ *McCornell v. City of Jackson, Miss.*, 489 F. Supp. 2d 605 (S.D. Miss. 2006) (applying Mississippi law); *Donohoe v. Burd*, 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991); *Sachs v. Levy*, 216 F. Supp. 44 (E.D. Pa. 1963); *Tolbert v. State*, 294 Ala. 738, 321 So. 2d 227 (1975); *McGann v. Allen*, 105 Conn. 177, 134 A. 810 (1926); *Laws v. Thompson*, 78 Md. App. 665, 554 A.2d 1264 (1989); *Ferraro v. First Safety Fund Nat. Bank*, 11 Mass. App. Ct. 928, 416 N.E.2d 225 (1981); *Moore v. Michigan Nat. Bank*, 368 Mich. 71, 117 N.W.2d 105, 1 A.L.R.3d 948 (1962); *Hoppe v. Klapperich*, 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 (1947); *State for Use and Benefit of Richardson v. Edgeworth*, 214 So. 2d 579 (Miss. 1968); *Melton v. Rickman*, 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945); *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967); *J. C. Penney Co. v. Gilford*, 422 S.W.2d 25 (Tex. Civ. App. Houston 1st Dist. 1967), writ refused n.r.e., (Mar. 27, 1968); *Mullins v. Sanders*, 189 Va. 624, 54 S.E.2d 116 (1949).

Substantial evidence supported the jury's finding that a car seller had engaged in abuse of process against a customer; the seller initiated a proceeding against the customer that caused the customer's arrest, and the seller allowed the case to proceed to a hearing in municipal court for the coercive purpose of collecting \$400 that the customer allegedly owed for a car, but the seller knew that the customer had not yet received the car, the keys to the car, or the certificate of title. *Routh Wrecker Service, Inc. v. Washington*, 335 Ark. 232, 980 S.W.2d 240 (1998).

As to a debt collector's liability under the Fair Debt Collection Practices Act (15 U.S.C.A. §§ 1692 to 1692o) for threatening to arrest a debtor for nonpayment of a debt, see Am. Jur. 2d, Consumer and Borrower Protection [\[WestlawNext® Search Query\]](#).

² *Donohoe v. Burd*, 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991); *Sachs v. Levy*, 216 F. Supp. 44 (E.D. Pa. 1963); *Vasseur v. Eunice Superette, Inc.*, 386 So. 2d 692 (La. Ct. App. 3d Cir. 1980), writ refused, 393 So. 2d 747 (La. 1980); *Melton v. Rickman*, 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945); *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 27 A.L.R.3d 1195 (1967); *J. C. Penney Co. v. Gilford*, 422 S.W.2d 25 (Tex. Civ. App. Houston 1st Dist. 1967), writ refused n.r.e., (Mar. 27, 1968); *Mullins v. Sanders*, 189 Va. 624, 54 S.E.2d 116 (1949).

A consumer failed to state a claim for abuse of process against a business from which she rented a home entertainment center, where there was no evidence that the business had any contact with the consumer subsequent to the initiation of criminal proceedings, and the consumer's counsel recognized in a note to his file that the business had left the matter of the criminal proceedings to the discretion of the district attorney. *Givens v. Rent-A-Center, Inc.*, 720 F. Supp. 160 (S.D. Ala. 1988), judgment aff'd, 885 F.2d 879 (11th Cir. 1989).

A defaulting tractor purchaser failed to establish abuse of process against the seller and the holder of a security interest in the tractor where: (1) the seller had filed criminal charges against the purchaser but did not misuse the criminal process; and (2) the holder of the security interest neither filed nor knew of the charges against the purchaser. *Tomash*

[v. John Deere Indus. Equipment Co.](#), 399 N.W.2d 387 (Iowa 1987).

As to a willful improper act in the use of process after its issuance by the defendant as an element of abuse of process, see § 5.

3 [Crease v. Pleasant Grove City](#), 30 Utah 2d 451, 519 P.2d 888 (1974).

4 [Davis v. Nebraska Furniture Mart, Inc.](#), 567 Fed. Appx. 640 (10th Cir. 2014) (applying Kansas law).

5 [Osinubepi-Alao v. Plainview Financial Services, Ltd.](#), 44 F. Supp. 3d 84 (D.D.C. 2014) (applying District of Columbia law).

Using the legal process to put pressure upon the other party to compel him to pay a different debt satisfies element of abuse of process claim under Iowa law that legal process be used in an improper or unauthorized manner. [Phelps v. Powers](#), 5 F. Supp. 3d 1036 (S.D. Iowa 2013) (applying Iowa law).

The district court did not abuse its discretion in concluding that the testimony of a defendant debt collection law firm's conduct in similar cases was relevant to a claim of entitlement to punitive damages under Montana law to show reprehensibility on claims of malicious prosecution and abuse of process. [McCollough v. Johnson, Rodenburg & Lauinger, LLC](#), 637 F.3d 939 (9th Cir. 2011) (applying Montana law).

6 [Myles v. Screentech, Inc.](#), 98 So. 3d 563 (Ala. Civ. App. 2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process III Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process


George L. Blum, J.D.

III. Persons Liable

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  188 to 191

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  188 to 191

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 17

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process


George L. Blum, J.D.

III. Persons Liable

§ 17. Persons liable; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  188, 189

Any person who makes use of a legal process for some private, personal purpose that is beyond the scope of the process, or who knowingly participates in its use for such a purpose, is liable in damages for abuse of process.¹

A person is also liable for abuse of process if the person procures the improper initiation of a proceeding by a third party.²

A nonlitigant may be liable under the tort of malicious abuse of process only if the nonlitigant is an active participant in the underlying civil proceeding.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Woodring v. Jennings State Bank](#), 603 F. Supp. 1060 (D. Neb. 1985); [MacDermid, Inc. v. Leonetti](#), 158 Conn. App. 176, 118 A.3d 158 (2015); [Saliem v. Glovsky](#), 132 Me. 402, 172 A. 4 (1934).

A social worker who decided to remove a child from his home because she suspected he was a victim of Munchausen syndrome by proxy did not commit abuse of process under Utah law, as required to support a Fourth Amendment claim; the social worker did not seek removal for an improper purpose, even if the child's death was not imminent, but instead commenced the removal out of concern for the child's health and to facilitate a diagnosis of Munchausen syndrome. [Roska ex rel. Roska v. Peterson](#), 328 F.3d 1230 (10th Cir. 2003).

As to the particular elements of an action for abuse of process, see §§ 5 to 10.

As to a debt collector's liability for abuse in connection with the collection of debt, see Am. Jur. 2d, Consumer and Borrower Protection [[WestlawNext® Search Query](#)].

² [Alexander v. Unification Church of America](#), 634 F.2d 673 (2d Cir. 1980); [Remes v. Duby](#), 69 Mich. App. 265, 244 N.W.2d 440 (1976).

Where an attorney persuaded a prosecuting attorney to institute a criminal proceeding against the attorney's former business associate in order to compel the associate to pay an outstanding debt, the attorney was liable for abuse of process. [Donohoe v. Burd](#), 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991).

³ Valles v. Silverman, 135 N.M. 91, 2004-NMCA-019, 84 P.3d 1056 (Ct. App. 2003).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 18

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

III. Persons Liable

§ 18. Ministerial officers and deputies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  191

An officer acting under legal process, if guilty of the improper illegal exercise of authority under it as to warrant the conclusion that the officer intended to use legal authority as a cover for illegal conduct,¹ is liable as a trespasser as though the officer had acted without process.² Hence, an officer who improperly seizes property,³ uses excessive force in serving a writ,⁴ or makes oppressive use of legally issued processes⁵ forfeits the protection that would be available had the officer executed the process for the purpose for which it was intended; for such abuse, the officer becomes liable in damages like any other private individual.⁶

An arrestee failed to establish malicious abuse of process claims against arresting officers, absent evidence that the officers issued criminal complaints against the arrestee to obtain a collateral objective outside the legitimate ends of the legal process.⁷ Where there was no evidence that an officer, who arrested an African-American customer who was allegedly banned from the store, used the legal process in a manner other than what would be proper in the regular prosecution of a criminal trespass charge, the customer's abuse of process claim was precluded.⁸

An officer's deputy will also be held liable for trespasses committed under color of that individual's commanding officer's authority.⁹

A public official may also be chargeable with abuse of process.¹⁰

Officers did not have an improper collateral purpose in employing the legal process in a driver's prosecution for driving under the influence of alcohol (DUI), and thus were not liable to driver in civil action for malicious abuse of process under § 1983 and state law, where the alleged objective of officers, that is, to make an arrest, was not collateral to the legal process.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Private investigator's allegations were insufficient to establish that police captain, detective, and police officer abused legal process to retaliate against her for contacting a witness with whom a member of police department was having a personal relationship by orchestrating investigator's arrest through a series of dishonest actions and thus, investigator failed to state a cause of action under Ohio law for abuse-of-process, where investigator failed to allege that defendants were aware of personal relationship with witness, that captain or detective participated in prosecution of investigator on charges of intimidation and telecommunications harassment, orchestrated her arrest or offered false statements and testimony against her, or that the process was perverted in any way. [Bickerstaff v. Lucarelli](#), 830 F.3d 388 (6th Cir. 2016).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Giddings v. Freedley](#), 128 F. 355 (C.C.A. 2d Cir. 1904).
- ² [Stern v. Riches](#), 111 Wis. 591, 87 N.W. 555 (1901).
- ³ [Woodring v. Jennings State Bank](#), 603 F. Supp. 1060 (D. Neb. 1985) (sheriff who levies on the separate property of a wife under an execution against her husband is liable for resulting damages).
As to a sheriff's liability in executing process and the like, generally, see Am. Jur. 2d, Sheriffs, Police, and Constables[[WestlawNext® Search Query](#)].
- ⁴ [Fourette v. Griffin](#), 92 Conn. 388, 103 A. 123 (1918).
Allegations that process servers had broken into the complainants' house by force in order to serve a summons stated a claim for abuse of process. [Remes v. Duby](#), 69 Mich. App. 265, 244 N.W.2d 440 (1976).
- ⁵ [Wood v. Bailey](#), 144 Mass. 365, 11 N.E. 567 (1887).
- ⁶ [Barrett v. White](#), 3 N.H. 210, 1825 WL 476 (1825).
- ⁷ [Marcano v. City of Schenectady](#), 38 F. Supp. 3d 238 (N.D. N.Y. 2014) (applying New York law).
An arrestee's allegations that state police officers abused the legal process by maliciously overcharging him were insufficient to state a claim under Pennsylvania law for abuse of process. [Ickes v. Grassmeyer](#), 30 F. Supp. 3d 375 (W.D. Pa. 2014) (applying Pennsylvania law).
- ⁸ [Harris v. Wal-Mart Stores, Inc.](#), 48 F. Supp. 3d 1025 (W.D. Tenn. 2014) (applying Tennessee law).
The arrest by police officers of a protester during a protest march and subsequent charge for allegedly assaulting the officer was not an abuse of the legal process in order to conceal the officers' excessive force or intimidate the protester into declining to file civil charges against the officers, since any alleged cover-up by the officers simply pointed to an ulterior motive, not an abuse of process, and the officers did not explicitly or implicitly encourage the protester not to assert his rights by filing the lawsuit. [Westfahl v. District of Columbia](#), 75 F. Supp. 3d 365 (D.D.C. 2014).
- ⁹ [Coltraine v. McCain](#), 14 N.C. 308, 3 Dev. 308, 1832 WL 366 (1832).
A pawnshop owner, who objected to police seizing rings from his pawnshop and failing to return them, failed to state a claim for abuse of process or malicious prosecution against a deputy who filed a declaration in support of a warrant for the owner's arrest, where the deputy filed the declaration but never had the warrant signed or issued, so there was no arrest or prosecution on which to base such a claim. [Sasin v. County of Kings](#), 67 Fed. Appx. 413 (9th Cir. 2003).
- ¹⁰ [Simmons v. Benjamin](#), 3 Misc. 2d 662, 156 N.Y.S.2d 118 (Mun. Ct. 1956).
A township did not commit abuse of process, under Pennsylvania law, when its Board of Supervisors voted to authorize intervention in a landowner's appeal in state court of the zoning board's denial of his request for a variance allowing him to build a house in a floodplain and subsequently voted to authorize appeals from the state court decision in the landowner's favor; the Board was not singling the landowner out for harassment but had legitimate concerns for public safety and health. [Levin v. Upper Makefield Township, Bucks County, Pa.](#), 90 Fed. Appx. 653 (3d Cir. 2004).
- ¹¹ [Hoyos v. City of New York](#), 999 F. Supp. 2d 375 (E.D. N.Y. 2013) (applying New York law).

A detainee who sued city and police officers failed to establish that the defendants engaged in legal process to compel the performance or forbearance of some act as required to maintain a claim for malicious abuse of process under New York law and the federal civil rights statute; there was no explicit charge of extortion, blackmail, retribution, or similar extraneous harmful goal nor any reasonable inference of such motive on part of defendants. [Brandon v. City of New York](#), 705 F. Supp. 2d 261 (S.D. N.Y. 2010) (applying New York law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 19

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

III. Persons Liable

§ 19. Persons procuring, aiding, abetting, advising, consenting, or ratifying abusive acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  188

Liability for the abuse of process tort generally extends to all who knowingly procure,¹ participate in,² aid, or abet the abuse,³ and those who advise or consent to the abusive acts,⁴ or who subsequently adopt or ratify them,⁵ are liable as joint tortfeasors. Thus, the injured person has a remedy not only against the officer serving the process but also against all others who may unite with the officer inflicting the injury.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [McGann v. Allen](#), 105 Conn. 177, 134 A. 810 (1926); [Coplea v. Bybee](#), 290 Ill. App. 117, 8 N.E.2d 55 (3d Dist. 1937).
- ² [McGann v. Allen](#), 105 Conn. 177, 134 A. 810 (1926); [Food Lion, Inc. v. United Food & Commercial Workers Intern. Union](#), 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002).
- ³ [Food Lion, Inc. v. United Food & Commercial Workers Intern. Union](#), 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002).
- ⁴ [Food Lion, Inc. v. United Food & Commercial Workers Intern. Union](#), 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002).
A judgment creditor who knowingly advises or ratifies an abuse of process resulting in a temporary wrongful seizure of personal property to satisfy the judgment is liable as a trespasser. [Woodring v. Jennings State Bank](#), 603 F. Supp. 1060 (D. Neb. 1985).
- ⁵ [McGann v. Allen](#), 105 Conn. 177, 134 A. 810 (1926); [Food Lion, Inc. v. United Food & Commercial Workers Intern. Union](#), 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002).
- ⁶ [Rock v. Abrashin](#), 154 Wash. 51, 280 P. 740, 65 A.L.R. 1280 (1929).

Works.

1 Am. Jur. 2d Abuse of Process § 20

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.

III. Persons Liable

§ 20. Judicial officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  190, 191

A.L.R. Library

[Civil liability of judicial officer for malicious prosecution or abuse of process, 64 A.L.R.3d 1251](#)

A judicial officer generally enjoys exemption from civil liability for abuse of process if: (1) the jurisdiction of the officer is complete and attaches to both the person and the subject matter in connection with which alleged illegal acts are committed; and (2) the officer acts within the scope of the officer's jurisdiction and in a judicial capacity.¹ However, a judicial officer may be held liable for abuse of process where the officer is wholly without jurisdiction and commits the abuse while acting under the pretense of the officer's official capacity.²

There may be a conflict of opinion as to the relationship between judicial immunity and malice; while some courts have held that judges acting within their jurisdiction are absolutely immune from liability, even if their actions are in error or performed with malice,³ at least one court seems to be of the view that the rule of judicial immunity does not apply to acts done with corrupt motives.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ State, for Use of Little v. U. S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697 (1953); Praisner v. Stocker, 313 Pa. Super. 332, 459 A.2d 1255 (1983) (overruled on other grounds by, Jenkins v. Hospital of Medical College of Pennsylvania, 401 Pa. Super. 604, 585 A.2d 1091 (1991)).

A psychiatrist, who, as a consultant to the disciplinary committee, recommended that an attorney undergo psychiatric examination in connection with misconduct proceedings brought against him was entitled to summary judgment dismissing the attorney's action for malicious prosecution and abuse of process, since his findings and letter to the

disciplinary committee concerning his evaluation of the attorney's psychiatric condition constituted privileged information and was immune from legal action, amounting to official acts in judicial proceeding. [Klapper v. Guria](#), 153 Misc. 2d 726, 582 N.Y.S.2d 892 (Sup 1992).

² [Osbeckoff v. Mallory](#), 188 N.W.2d 294, 64 A.L.R.3d 1242 (Iowa 1971) (a town mayor, in his capacity as a magistrate in a mayor's court, was not immune from liability for abuse of process for using the criminal process to collect a civil debt).
As to the civil liability of judges for acts done in the exercise of their judicial function, generally, see Am. Jur. 2d, Judges[[WestlawNext® Search Query](#)].

³ [Barlow v. Yenkosky](#), 146 Ga. App. 872, 247 S.E.2d 519 (1978) (holding that a justice of the peace who issued an arrest warrant through misapprehension of the pertinent statute was not deprived of immunity to suit for malicious abuse of process and would be liable only when acting in the clear absence of all jurisdiction); [Hoppe v. Klapperich](#), 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 (1947).

⁴ [Conques v. Hardy](#), 337 So. 2d 627 (La. Ct. App. 3d Cir. 1976) (holding that a justice of the peace had judicial immunity and was not liable in damages for the issuance of an unlawful warrant for the arrest of a nine-year-old boy where, although the justice did not have juvenile jurisdiction and a statute exempted persons under age 10 from criminal responsibility, there was no allegation that the defendant acted with malice or corruption).

1 Am. Jur. 2d Abuse of Process § 21

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

III. Persons Liable

§ 21. Attorneys

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  190

A.L.R. Library

[Civil liability of attorney for abuse of process, 97 A.L.R.3d 688](#)

[Attorney's liability under 42 U.S.C.A. sec. 1983 for improperly instituting or pursuing legal procedure, 72 A.L.R. Fed. 724](#)

A nonclient may bring a cause of action against an attorney for abuse of process.¹ To support an abuse of process claim against an attorney, there must be evidence that the attorney filed a claim for a purpose other than aiding the client in adjudicating the client's claim.² The mere institution of legal action by an attorney does not constitute abuse of process even where it is purportedly done with an improper purpose or motive; there must be a showing that the attorney performed some additional act in the use of the legal process that is not proper in the regular prosecution of the proceedings.³

CUMULATIVE SUPPLEMENT

Cases:

Contractor sufficiently pleaded an abuse of process claim against condominium unit owner and her attorney arising out of their conduct in prior litigation between the parties, where contractor alleged that attorney made a false affirmation, which served as foundation for obtaining judgment in prior action, and did so with malice. [McKinney's CPLR 3211\(a\)\(7\). X-Act Contracting Corp. v. Flanders, 148 A.D.3d 518, 50 N.Y.S.3d 45 \(1st Dep't 2017\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Romeo v. Jones](#), 86 S.W.3d 428 (Mo. Ct. App. E.D. 2002), retransferred to Mo. Ct. of Appeals, (Oct. 22, 2002) and opinion adopted and reinstated after retransfer, (Nov. 4, 2002).

² [Estate of Mayer v. Lax, Inc.](#), 998 N.E.2d 238 (Ind. Ct. App. 2013) transfer denied, 2 N.E.3d 686 (Ind. 2014).

³ [Epps v. Vogel](#), 454 A.2d 320 (D.C. 1982); [Ewert v. Wieboldt Stores, Inc.](#), 38 Ill. App. 3d 42, 347 N.E.2d 242 (1st Dist. 1976); [Weldon v. Republic Bank](#), 414 So. 2d 1361 (La. Ct. App. 2d Cir. 1982); [Tedards v. Auty](#), 232 N.J. Super. 541, 557 A.2d 1030 (App. Div. 1989); [Drago v. Buonagurio](#), 89 Misc. 2d 171, 391 N.Y.S.2d 61 (Sup 1977), judgment rev'd on other grounds, 61 A.D.2d 282, 402 N.Y.S.2d 250 (3d Dep't 1978), judgment rev'd on other grounds, 46 N.Y.2d 778, 413 N.Y.S.2d 910, 386 N.E.2d 821 (1978); [Blanton v. Morgan](#), 681 S.W.2d 876 (Tex. App. El Paso 1984), writ refused n.r.e., (May 1, 1985); [Fite v. Lee](#), 11 Wash. App. 21, 521 P.2d 964, 97 A.L.R.3d 678 (Div. 2 1974).

An ex-husband did not establish an abuse of process claim against his ex-wife's attorney, who had represented her in postdivorce litigation, absent allegations that any court document or initiation of court process was used improperly. [Tanguay v. Asen](#), 1998 ME 277, 722 A.2d 49 (Me. 1998).

A husband could maintain a cause of action for abuse of process against his former wife's attorney regarding a writ of ne exeat obtained by the attorney and used to arrest the husband overnight until he posted bond sufficient to cover the full amount of the wife's demand and attorney's fees where the attorney did not deny that he used the writ to extort a settlement that included payment of his fee. [Tedards v. Auty](#), 232 N.J. Super. 541, 557 A.2d 1030 (App. Div. 1989).

An attorney stated a cause of action for abuse of process against another attorney who initiated disciplinary proceedings against the plaintiff attorney and, in support of the disciplinary proceedings, took depositions to support the complaint when such depositions were the responsibility of the authorities charged with prosecution of ethics complaints. [Ely v. Whitlock](#), 238 Va. 670, 385 S.E.2d 893 (1989).

As to the elements of the tort of abuse of process, generally, see § 5.

1 Am. Jur. 2d Abuse of Process § 22

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

III. Persons Liable

§ 22. Attorneys—Professional privileges or immunities as bar or defense to action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  190

A.L.R. Library

[Civil liability of attorney for abuse of process, 97 A.L.R.3d 688](#)

[Attorney's liability under 42 U.S.C.A. sec. 1983 for improperly instituting or pursuing legal procedure, 72 A.L.R. Fed. 724](#)

Various privileges or immunities generally applicable to the conduct of attorneys in their professional capacities have been raised as defenses to suits for abuse of process. Neither an attorney's general immunity from suit as a quasi-judicial officer¹ nor his privilege as an attorney acting on behalf of a client² has been held to bar a suit for abuse of process in a proper case. An absolute privilege protecting attorneys from liability for defamation occurring in the course of a judicial proceeding does not provide an attorney with an absolute defense to liability for abuse of process.³ An assertion of "judicial immunity," a privilege under state law extending to communications which are issued in the regular course of judicial proceedings and which are pertinent and material to the redress or relief sought, has been held insufficient to justify dismissal of a complaint alleging abuse of process on the part of an attorney.⁴ Although caution must be exercised in imposing liability for allegedly overzealous representation of a client, an allegation that a law firm overstepped the limits of zealous representation by creating or using false evidence, or by assisting clients who had brought a conversion action against an individual with the aid of evidence known to be false, is sufficient to state a claim for abuse of process.⁵

In other instances, however, privileges or immunities have been held to bar actions for abuse of process. A statutory litigation privilege protecting a "publication or broadcast. . . in any judicial proceeding" has been held to bar an abuse of process claim against an attorney insofar as the claim is premised on conduct that is within the privilege.⁶ A claim for abuse of process against a district attorney's office is barred under the doctrine of prosecutorial immunity where the claimant does not assert liability for anything other than the office's litigation-related activities.⁷ Attorneys who represented a disciplinary committee in connection with a misconduct petition filed against an attorney were entitled to dismissal of that attorney's action for

malicious prosecution and abuse of process since they were performing a prosecutorial function and were therefore entitled to the prosecutor's quasi-judicial immunity.⁸

CUMULATIVE SUPPLEMENT

Cases:

Attorney's alleged conduct in sending letters to property owners who were represented by counsel threatening legal process without knowledge or consent of his client and engaging in target practice with handguns without warning to other neighborhood residents on weekend before his and client's deposition in zoning dispute with property owners did not constitute abuse of process, where none of occurrences involved misapplication of court process, and appropriate consequence for alleged unethical conduct was ethical complaint. [Weinstein v. Leonard, 2015 VT 136, 134 A.3d 547 \(Vt. 2015\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Hoppe v. Klapperich, 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 \(1947\)](#).
As to liability of judicial officers, see § 20.
- ² [Adelman v. Rosenbaum, 133 Pa. Super. 386, 3 A.2d 15 \(1938\)](#).
- ³ [Alexandru v. Dowd, 79 Conn. App. 434, 830 A.2d 352 \(2003\)](#).
- ⁴ [General Refractories Co. v. Fireman's Fund Ins. Co., 337 F.3d 297 \(3d Cir. 2003\)](#) (applying Pennsylvania law and holding that on remand, the district court could examine the allegations of the complaint to determine whether the communications in question were within the privilege).
- ⁵ [Honzawa v. Honzawa, 268 A.D.2d 327, 701 N.Y.S.2d 411 \(1st Dep't 2000\)](#) (where the plaintiff alleged that a law firm took and utilized the affidavit of a family member in support of attachment of the plaintiff's funds when it knew or should have known that the family member could not have had personal knowledge of matters therein contained).
- ⁶ [Ramona Unified School Dist. v. Tsiknas, 135 Cal. App. 4th 510, 37 Cal. Rptr. 3d 381, 205 Ed. Law Rep. 498 \(4th Dist. 2005\)](#).
- ⁷ [Arum v. Miller, 331 F. Supp. 2d 99, 192 Ed. Law Rep. 75 \(E.D. N.Y. 2004\)](#).
- ⁸ [Klapper v. Guria, 153 Misc. 2d 726, 582 N.Y.S.2d 892 \(Sup 1992\)](#).

1 Am. Jur. 2d Abuse of Process § 23

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process


George L. Blum, J.D.

III. Persons Liable

§ 23. Client as derivatively liable for attorney's abuse of process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Attorney and Client  77

Although an attorney is, in a limited or restricted sense, an agent of his or her client, the scope of an attorney's implied authority as an agent should not, as a matter of law, extend to acts which constitute an abuse of legal process. Therefore, when an attorney has, without the knowledge or consent of his client, abused process to the damage of another, the attorney has acted outside the scope of his agency and the client is not derivatively liable.¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Fite v. Lee, 11 Wash. App. 21, 521 P.2d 964, 97 A.L.R.3d 678 \(Div. 2 1974\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process IV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

IV. Actions

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  [184](#), [200](#), [203](#), [204](#), [207](#) to [210](#)

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, [Process](#)  [184](#), [200](#), [203](#), [204](#), [207](#) to [210](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 24

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.

IV. Actions

A. In General

§ 24. Actions; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  200

An action for abuse of process is an action for damages for a personal tort committed against the complaining party.¹

Frequently, the same facts that give rise to an abuse of process also establish an action for malicious prosecution or false imprisonment, in which case the causes may be joined in the same action² but not in the same count.³

The Federal Rules of Civil Procedure do not preempt claims for abuse of process and similar torts providing relief for misconduct in federal litigation; therefore, victims of such misconduct may, in appropriate circumstances, bring suit to recover damages under state causes of action.⁴

The recovery in an action for abuse of process may include both compensatory⁵ and punitive damages.⁶ In addition, a person who has been guilty of an abuse of process will not be permitted to benefit from such abuse. Appropriate action will be taken to prevent such benefit; for example, money extorted by an abuse of process may be recovered,⁷ and a party guilty of abuse of process may be enjoined from using wrongfully seized property in order to gain a business advantage.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Williams v. Lewis](#), 163 Ga. App. 729, 296 S.E.2d 81 (1982); [Melton v. Rickman](#), 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945); [Langford v. McLeod](#), 269 S.C. 466, 238 S.E.2d 161 (1977).

² [Ellis v. Wellons](#), 224 N.C. 269, 29 S.E.2d 884 (1944).
As to distinction between abuse of process and malicious prosecution or false imprisonment, see §§ 3, 4.

³ [Clikos v. Long](#), 231 Ala. 424, 165 So. 394 (1936).

⁴ [U.S. Express Lines Ltd. v. Higgins](#), 281 F.3d 383 (3d Cir. 2002).

⁵ § 30.

⁶ § 31.

⁷ Severance v. Kimball, 8 N.H. 386, 1836 WL 1280 (1836).

⁸ Rosenthal v. Muskegon Circuit Judge, 98 Mich. 208, 57 N.W. 112 (1893).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 25

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

IV. Actions

A. In General

§ 25. Jurisdictional considerations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  200

The exercise of personal jurisdiction over the leaders of a veterans organization's state department, who, in their personal acts as individuals, had approved a defamation lawsuit in another state against the members of organizations for having distributed fliers making accusations of fraud and misconduct against the leaders, in the members' abuse of legal process claim brought in the second state, did not violate traditional notions of fair play and substantial justice as would comply with due process and that state's long-arm statute; it was scarcely unfair to make those who had initiated a lawsuit in a particular state to undergo a suit in that state to determine whether the lawsuit was tortious.¹ To determine, for purposes of an independent contractor's state-court counterclaim against a manufacturer for malicious abuse of process, whether the manufacturer had probable cause for bringing an underlying action against the contractor, the state court would not treat the manufacturer's action in federal court, asserting a violation of the Federal Racketeer Influenced and Corrupt Organizations Act (RICO) and state-law claims for conspiracy, fraud, and conversion, separately from manufacturer's refiled action in state court, asserting state-law claims for conspiracy, fraud, and conversion, after the manufacturer voluntarily dismissed the RICO claim and the federal district court thereby lost supplemental jurisdiction over the state-law claims.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Rusakiewicz v. Lowe](#), 556 F.3d 1095 (10th Cir. 2009) (applying Utah law) (the leaders were part of an ad hoc decision-making "team" that agreed that the state director should file a defamation lawsuit in Utah, and decisions to authorize and support the lawsuit were made in Utah).

² [Fleetwood Retail Corp. of N.M. v. LeDoux](#), 2007-NMSC-047, 142 N.M. 150, 164 P.3d 31 (2007).
A bank, by filing lawsuit in an Ohio state court against Kentucky cattle ranchers and serving the ranchers with process, did not engage in a willful act not proper in the regular course of the proceeding as required to satisfy the second element of the tort of abuse of process under Kentucky law; although the bank's lawsuit was dismissed for lack of personal jurisdiction, even the filing of such a lawsuit in a place that was inconvenient and caused financial hardship to the ranchers did not ipso facto render the service of process an improper act, and the ranchers pleaded no facts in their

complaint to suggest that the bank engaged in coercion or otherwise did anything more than carry out the process to its authorized conclusion. [Kinslow v. Fifth Third Bank, Inc.](#), 529 Fed. Appx. 467 (6th Cir. 2013) (applying Kentucky law).

Abuse of process and malicious prosecution claims asserted by plaintiff in Missouri state court, which were based on defendant's earlier action seeking a declaratory judgment that a proposed land use would not violate the terms of a consent decree previously entered by a federal court, did not come within the scope of federal jurisdiction under the All Writs Act and were not on that basis subject to removal; the federal consent decree would not be directly affected, for good or ill, by the outcome of the case. [Nichols v. Harbor Venture, Inc.](#), 284 F.3d 857 (8th Cir. 2002).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 26

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.


IV. Actions

A. In General

§ 26. Pleading

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  [200](#), [203](#), [204](#)

Forms

Complaint, petition, or declaration—Service of process effected by breaking into dwelling—Knowledge that person to be served was invalid. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

In order to state a cause of action for abuse of process, the pleadings must allege the essential elements of the action.¹ Facts, and not conclusions, must be alleged.² Thus, conclusory statements in a counterclaim, even if true, are insufficient to state a claim for abuse of process.³

Where malice is considered to be an element of the action,⁴ a pleading of abuse of process is sufficient if it avers facts out of which an inference of wrongful and malicious use of process by the defendant arises and from which malice may be implied.⁵

CUMULATIVE SUPPLEMENT

Cases:

Public university festival attendee failed to allege an act of abuse beyond the initiation of the criminal complaint against attendee for criminal trespass, as required to state claim for abuse of process under Arizona law against, inter alia, governing body of state's public university system, arising from attendee's arrest after attendee refused to stop speaking during festival with sound amplification system, despite contention that university, acting through dean of students, engaged in campaign to

hinder attendee's amplified religious speech; university law enforcement officers had probable cause to arrest attendee for a misdemeanor committed in their presence, irrespective of the dean's conduct. *U.S. Const. Amend. 4*; *Ariz. Rev. Stat. Ann. § 13-1502(A)(1)*. *Spears v. Arizona Board of Regents*, 372 F. Supp. 3d 893 (D. Ariz. 2019).

Distributors of unauthorized receivers failed to identify abusive act and, thus, did not state counterclaim for abuse of process under Puerto Rico law against satellite television provider and security technology company; other than filing civil action, distributors set forth no additional facts suggesting that either provider or company performed abusive act. *Dish Network LLC v. Llinas*, 310 F. Supp. 3d 310 (D.P.R. 2018).

Husband sufficiently alleged cause of action for abuse of process against wife; husband alleged that wife referenced criminal charges arising from wife's accusation of domestic violence and implicitly demanded use of his credit card or she would do something that he could not fix, that wife made threat in attempt to extort husband after state had filed formal charges against him, and that wife thereafter filed false affidavit and request for prosecution. *Verdon v. Song*, 251 So. 3d 256 (Fla. 5th DCA 2018).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ *White v. Holderby*, 192 F.2d 722 (5th Cir. 1951); *State Farm Mut. Auto. Ins. Co. v. Fue Lee*, 193 Cal. App. 4th 34, 122 Cal. Rptr. 3d 183 (3d Dist. 2011); *Geier v. Jordan*, 107 A.2d 440 (Mun. Ct. App. D.C. 1954); *Strickland v. Royal Indem. Co.*, 230 Ga. 425, 197 S.E.2d 347 (1973); *Brown v. Robertson*, 120 Ind. App. 434, 92 N.E.2d 856 (1950); *Altenhaus v. Louison*, 342 Mass. 773, 172 N.E.2d 230 (1961); *Romeo v. Jones*, 86 S.W.3d 428 (Mo. Ct. App. E.D. 2002), retransferred to Mo. Ct. of Appeals, (Oct. 22, 2002) and opinion adopted and reinstated after retransfer, (Nov. 4, 2002); *Salminen v. Morrison & Frampton, PLLP*, 2014 MT 323, 377 Mont. 244, 339 P.3d 602 (2014); *Saylor v. Valles*, 133 N.M. 432, 2003-NMCA-037, 63 P.3d 1152 (Ct. App. 2002); *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980); *Columbia County v. Sande*, 175 Or. App. 400, 28 P.3d 657 (2001); *Wharton v. Tri-State Drilling & Boring*, 175 Vt. 494, 2003 VT 19, 824 A.2d 531 (2003); *Hough v. Stockbridge*, 152 Wash. App. 328, 216 P.3d 1077 (Div. 2 2009).

Former husband stated a claim for abuse of process by alleging that his former wife wished to gain sole custody of their daughter and remove her from the Commonwealth, that the former wife caused a criminal complaint to issue against him, that he was eventually acquitted, and that he suffered damages as a result of the former wife's actions. *Franco v. Mudford*, 2002 Mass. App. Div. 63, 2002 WL 539065 (2002), decision aff'd, 60 Mass. App. Ct. 1112, 802 N.E.2d 129 (2004).

As to the essential elements of abuse of process, generally, see § 5.

² *Landers v. Georgia Public Service Commission*, 217 Ga. 804, 125 S.E.2d 495 (1962).
In order to satisfy the first element of abuse of process, a plaintiff must plead facts that show that the defendant instituted proceedings against the plaintiff for an improper purpose, such as extortion, intimidation, or embarrassment; however, the mere institution of a suit for an improper purpose does not itself constitute an abuse of process. *Neurosurgery and Spine Surgery, S.C. v. Goldman*, 339 Ill. App. 3d 177, 274 Ill. Dec. 152, 790 N.E.2d 925 (2d Dist. 2003).

³ *Holley v. Caulfield*, 49 S.W.3d 747 (Mo. Ct. App. E.D. 2001).
Allegations contained in malicious prosecution and abuse of process claims by mortgagors in a counterclaim against the mortgagee in a foreclosure action, that the foreclosure action was commenced by mortgagee without probable cause, that the action was maliciously brought, and that the mortgagors were embarrassed and humiliated and had their reputation impugned, were legally insufficient as no facts were alleged in support of the counterclaim's mere conclusions of law. *Fidelity Bank v. Krenisky*, 72 Conn. App. 700, 807 A.2d 968 (2002).
A generalized allegation that a defendant has "misused the litigation process as a whole" cannot support a claim of abuse of process; rather, such claim must be based on something more than the opposing party's mere persistence in the litigation. *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004).

⁴ As to the necessity of malice, see § 8.

⁵ Clikos v. Long, 231 Ala. 424, 165 So. 394 (1936); Hall v. Field Enterprises, Inc., 94 A.2d 479 (Mun. Ct. App. D.C. 1953); Station Associates, Inc. v. Long Island R. Co., 18 Misc. 2d 1092, 188 N.Y.S.2d 435 (Sup 1959); Bailey v. McGill, 247 N.C. 286, 100 S.E.2d 860 (1957).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 27

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.


IV. Actions

A. In General

§ 27. Proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  207 to 210

Forms

Instructions to jury—Definition—Malice. See Am. Jur. Pleading and Practice Forms, Abuse of Process [\[WestlawNext® Search Query\]](#)

In an action for abuse of process, the burden of proof lies with the party claiming abuse.¹

Since a malicious abuse of process counterclaim should be reached only if the jury finds for the defendant on all the underlying claims, the plaintiff will have lost on its original claims before the jury considers the counterclaim, and thus, it is not necessary to impose a higher burden of proof on the defendant alleging lack of probable cause in a counterclaim for malicious abuse of process.²

Improper acts may not be inferred from the existence of an improper motive alone; if the act of the prosecutor is in itself regular, the motive, ulterior or otherwise, is immaterial.³

The existence of an ulterior motive is a question for the jury,⁴ and may be established by showing a direct demand for collateral advantage, or may be inferred from what is said or done about the process.⁵ Facts occurring prior to the filing of a formal action and the issuance of process may also serve as evidence of an ulterior motive.⁶ Although an ulterior motive may be inferred from the wrongful use of process, supporting a claim of abuse of process, the wrongful use may not be inferred from the motive in certain jurisdictions;⁷ in other jurisdictions, however, to establish an abuse of process claim, the defendant must have acted willfully and had some ulterior purpose in the improper use of process, which can be inferred from the wrongful use of process.⁸

In jurisdictions where proof of malice is required in order to sustain an action for abuse of process,⁹ malice may be inferred from the willful abuse of the process,¹⁰ but it cannot be inferred from a mere mistake.¹¹

In abuse of process actions, the plaintiff is not required to present expert testimony on the reasonableness of the defendant's actions in the underlying litigation.¹² Statements made by the defendant to the plaintiff are proper proof to show both ulterior motive and perversion of legal process.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Cramer v. Crutchfield, 496 F. Supp. 949 (E.D. Va. 1980), judgment aff'd, 648 F.2d 943 (4th Cir. 1981); Warwick Development Co., Inc. v. GV Corp., 469 So. 2d 1270 (Ala. 1985).
The burden of proving an overt act by independent evidence remains upon the plaintiff claiming malicious abuse of process. Weststar Mortg. Corp. v. Jackson, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).
- ² Fleetwood Retail Corp. of N.M. v. LeDoux, 2007-NMSC-047, 142 N.M. 150, 164 P.3d 31 (2007).
- ³ Wilcon, Inc. v. Travelers Indem. Co., 654 F.2d 976 (5th Cir. 1981); Tellefsen v. Key System Transit Lines, 198 Cal. App. 2d 611, 17 Cal. Rptr. 919 (1st Dist. 1961); Geier v. Jordan, 107 A.2d 440 (Mun. Ct. App. D.C. 1954); Wessler v. Wessler, 610 S.W.2d 650 (Mo. Ct. App. E.D. 1980); Ash v. Cohn, 119 N.J.L. 54, 194 A. 174 (N.J. Ct. Err. & App. 1937); Priest v. Union Agency, 174 Tenn. 304, 125 S.W.2d 142 (1939); Bosler v. Shuck, 714 P.2d 1231 (Wyo. 1986).
A plaintiff in an abuse of process action has the burden of demonstrating the defendant had some ulterior purpose and acted willfully in the improper use of the process; an ulterior purpose may be inferred from a wrongful use made of a judicial process. Lambert v. Warner, 379 S.W.3d 849 (Mo. Ct. App. E.D. 2012).
- ⁴ Warwick Development Co., Inc. v. GV Corp., 469 So. 2d 1270 (Ala. 1985).
- ⁵ Vittands v. Sudduth, 49 Mass. App. Ct. 401, 730 N.E.2d 325 (2000).
Use of the criminal process against an employee, who mistakenly received and cashed a payroll check for over \$18,000, instead of the correct amount due of \$717.40, did not give rise to an abuse of process claim against the city under Mississippi law since there was no evidence of improper use of process or that an ulterior motive existed for the city's actions. McCornell v. City of Jackson, Miss., 489 F. Supp. 2d 605 (S.D. Miss. 2006) (applying Mississippi law).
- ⁶ Owen v. Owen, 642 S.W.2d 410 (Mo. Ct. App. S.D. 1982).
- ⁷ Colorado Community Bank v. Hoffman, 2013 COA 146, 338 P.3d 390 (Colo. App. 2013), cert. denied, 2014 WL 4700646 (Colo. 2014).
- ⁸ Green v. Missouri, 734 F. Supp. 2d 814 (E.D. Mo. 2010), aff'd, 676 F.3d 748, 278 Ed. Law Rep. 814 (8th Cir. 2012) (applying Missouri law).
- ⁹ § 8.
- ¹⁰ Clikos v. Long, 231 Ala. 424, 165 So. 394 (1936); Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund, 24 Cal. 4th 800, 102 Cal. Rptr. 2d 562, 14 P.3d 234 (2001); Bothmann v. Harrington, 458 So. 2d 1163 (Fla. 3d DCA 1984); Coplea v. Bybee, 290 Ill. App. 117, 8 N.E.2d 55 (3d Dist. 1937); Station Associates, Inc. v. Long Island R. Co., 18 Misc. 2d 1092, 188 N.Y.S.2d 435 (Sup 1959); Ledford v. Smith, 212 N.C. 447, 193 S.E. 722 (1937).
Under California law, abuse of process claims merely require malice, which may be inferred from the willful abuse of the process. Garcia v. City of Merced, 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law).
- ¹¹ Clikos v. Long, 231 Ala. 424, 165 So. 394 (1936).
- ¹² Crackel v. Allstate Ins. Co., 208 Ariz. 252, 92 P.3d 882 (Ct. App. Div. 2 2004).
- ¹³ Hoppe v. Klapperich, 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 (1947); Ellis v. Wellons, 224 N.C. 269, 29 S.E.2d 884 (1944); Mullins v. Sanders, 189 Va. 624, 54 S.E.2d 116 (1949).
Evidence in a suit for malicious abuse of process was sufficient to establish that defendant escrow company used criminal prosecution to compel the plaintiff to return money mistakenly deposited in plaintiff's account; after sending

plaintiff a letter threatening legal action, a supervisor from the escrow company contacted a detective and was in the detective's office when the detective called the plaintiff's attorney and stated that the only way for plaintiff to avoid criminal prosecution was to resolve the dispute with the escrow company. [Weststar Mortg. Corp. v. Jackson](#), 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 28

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.

IV. Actions

A. In General

§ 28. Defenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  184

Forms

Pleading and practice forms, Defenses in civil proceedings See Am. Jur. Pleading and Practice Forms, Abuse of Process
[\[WestlawNext® Search Query\]](#)

The exercise of good faith is a defense to an action for abuse of process.¹

A statutory privilege for publications made in judicial proceedings may be applied to defeat an action for abuse of process.² However, even when this privilege is absolute, it must be shown that the publication in question had some connection or legal relation to the action, that it was made to achieve the objects of the litigation, and that it involved litigants and other participants authorized by the law.³

The fact that a plaintiff acted under the advice of counsel is not generally considered to be a defense⁴ although evidence of such reliance may be considered with regard to mitigation of damages.⁵ The existence of probable cause is also not a defense to an abuse of process claim⁶ except where want of probable cause is considered an element of the action.⁷

A patient and her husband, who brought an action against a physician for alleged sexual abuse, were not immune from the physician's abuse of process counterclaim under a statute providing that persons who file complaints with the government are immune from civil suit regarding those complaints even though the patient and husband had filed complaints with the Medical Quality Assurance Commission (MQAC) and the police; once the patient and husband became private plaintiffs seeking private relief, they ceased to be among the class of persons protected from liability under the statute.⁸

Footnotes

- ¹ [OfficeMax Inc. v. Sousa](#), 773 F. Supp. 2d 190 (D. Me. 2011) (applying Maine law); [Wilkerson v. Randall](#), 254 Miss. 546, 180 So. 2d 303 (1965); [A & A Metal Bldgs. v. I-S, Inc.](#), 274 N.W.2d 183 (N.D. 1978).
- ² [Profile Structures, Inc. v. Long Beach Bldg. Material Co.](#), 181 Cal. App. 3d 437, 226 Cal. Rptr. 192 (2d Dist. 1986); [Netterville v. Lear Siegler, Inc.](#), 397 So. 2d 1109 (Miss. 1981) (statute accords absolute privilege to publications in disciplinary proceedings against an attorney).
As to a privilege or immunity as a bar or defense to a claim for abuse of process against an attorney, see § 22.
- ³ [Umansky v. Urquhart](#), 84 Cal. App. 3d 368, 148 Cal. Rptr. 547 (4th Dist. 1978).
- ⁴ [Gause v. First Bank of Marianna](#), 457 So. 2d 582 (Fla. 1st DCA 1984); [Ahrens v. Ahrens](#), 386 N.W.2d 536 (Iowa Ct. App. 1986); [Mullins v. Sanders](#), 189 Va. 624, 54 S.E.2d 116 (1949).
- ⁵ [Flynn v. Songer](#), 399 S.W.2d 491 (Ky. 1966); [Mullins v. Sanders](#), 189 Va. 624, 54 S.E.2d 116 (1949).
Any factual affirmative defense of waiver of an abuse of process claim by failing to object to interrogatories and deposition questions should be resolved by the trial court only upon complete consideration of all the surrounding facts and circumstances; deciding the defense based on a motion to dismiss would be inappropriate. [Givens v. Mullikin ex rel. Estate of McElwaney](#), 75 S.W.3d 383 (Tenn. 2002).
- ⁶ [McCarthy v. Kleindienst](#), 741 F.2d 1406, 39 Fed. R. Serv. 2d 1165 (D.C. Cir. 1984).
A county sheriff's deputies were entitled to qualified immunity from an arrestee's § 1983 abuse of process claim; the law in the Second Circuit on whether probable cause served as a complete defense to abuse of process charge remained unsettled. [Hogan v. County of Lewis, N.Y.](#), 929 F. Supp. 2d 130 (N.D. N.Y. 2013), on reconsideration in part, 2014 WL 118964 (N.D. N.Y. 2014).
The existence of probable cause was not a complete defense to a § 1983 claim of abuse of process. [Mangino v. Incorporated Village of Patchogue](#), 814 F. Supp. 2d 242 (E.D. N.Y. 2011).
- ⁷ As to want of probable cause as an element of abuse of process, see § 9.
- ⁸ [Saldivar v. Momah](#), 145 Wash. App. 365, 186 P.3d 1117 (Div. 2 2008), as amended, (July 15, 2008).

1 Am. Jur. 2d Abuse of Process § 29

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.

IV. Actions

A. In General

§ 29. Limitation of action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  203

A.L.R. Library

[What statute of limitations governs action for malicious use of process or abuse of process, in the absence of an express provision for such tort, 10 A.L.R.3d 533](#)

[When statute of limitations begins to run against action for abuse of process, 1 A.L.R.3d 953](#)

An action for abuse of process may come within the provisions of a statute of limitations applicable to actions for “injuries done to the person,”¹ for injury “caused by the wrongful act or neglect of another,”² for injury to property,³ for injury inflicted by specific parties,⁴ or for actions not specifically covered by other statutes.⁵

The statute begins to run against such an action from the termination of the acts which constitute the abuse complained of.⁶ To the extent that any of a plaintiff's intentional infliction of emotional distress or abuse of process claims were completely independent of the plaintiff's malicious prosecution claim, such claims were subject to a three-year limitations period, which began to run on the date the alleged tortious conduct occurred.⁷

The accrual of a cause of action for abuse of process need not await the termination of an action in claimant's favor.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Johnson v. Dailey, 479 F.2d 86 \(8th Cir. 1973\); Northwest Airlines, Inc. v. Camacho, 296 F.3d 787 \(9th Cir. 2002\)](#)

(law of Commonwealth of the Northern Mariana Islands); *Moore v. Michigan Nat. Bank*, 368 Mich. 71, 117 N.W.2d 105, 1 A.L.R.3d 948 (1962); *Levine v. Sherman*, 86 Misc. 2d 997, 384 N.Y.S.2d 685 (Sup 1976).

The Missouri five-year statute of limitations for general personal injury claims applies to a claim for abuse of process. *Jones v. Slay*, 61 F. Supp. 3d 806 (E.D. Mo. 2014) (applying Missouri law).

² *Northwest Airlines, Inc. v. Camacho*, 296 F.3d 787 (9th Cir. 2002); *Kappel v. Bartlett*, 200 Cal. App. 3d 1457, 246 Cal. Rptr. 815 (2d Dist. 1988); *Earl v. Winne*, 14 N.J. 119, 101 A.2d 535 (1953).

³ *Wilkinson v. Ellis*, 484 F. Supp. 1072 (E.D. Pa. 1980).

⁴ *Jenkins v. Daniels*, 751 P.2d 19 (Alaska 1988) (holding that in an abuse of process action charging that police officers used their investigatory powers improperly by conducting a pretextual search and retaliatory arrest, the three-year statute of limitations governing actions brought against a peace officer or coroner for liability incurred while acting in their official capacity, rather than the two-year statute governing most tort actions, was applicable).

⁵ *Gowin v. Altmiller*, 663 F.2d 820 (9th Cir. 1981) (applying Idaho law).
Virginia's two-year "catchall" statute of limitations, not that for personal injury actions, applied to a middle school employee's claim for abuse of process. *Lucas v. Henrico County School Bd.*, 822 F. Supp. 2d 589, 278 Ed. Law Rep. 207 (E.D. Va. 2011) (applying Virginia law).

Under District of Columbia law, a plaintiff's intentional infliction of emotional distress and abuse of process claims were intertwined with his malicious prosecution claim, and thus, the one-year limitations period for malicious prosecution claim applied to all intertwined claims where the claims stemmed from the same conduct. *Singh v. District of Columbia*, 881 F. Supp. 2d 76 (D.D.C. 2012) (applying District of Columbia law).

State-law claims alleged by the owners of property on a lake in a state park against a state park agency and its employees for malicious prosecution, abuse of process, and reckless supervisory misconduct, were governed by the one-year statute of limitations period under New York law. *Douglas v. New York State Adirondack Park Agency*, 895 F. Supp. 2d 321 (N.D. N.Y. 2012), on reconsideration in part, 2012 WL 5364344 (N.D. N.Y. 2012) (applying New York law).

⁶ *Gowin v. Altmiller*, 455 F. Supp. 743 (D. Idaho 1978), judgment aff'd, 663 F.2d 820 (9th Cir. 1981); *Harvey v. Pincus*, 549 F. Supp. 332 (E.D. Pa. 1982), judgment aff'd, 716 F.2d 890 (3d Cir. 1983); *Little v. Sowers*, 167 Kan. 72, 204 P.2d 605 (1949).

An abuse of process action was properly dismissed where the plaintiff newspaper did not file the action within the one-year limitation period, which began to run when defendants' libel suit against newspaper was dismissed. *Preiser v. MacQueen*, 177 W. Va. 273, 352 S.E.2d 22 (1985).

⁷ *Singh v. District of Columbia*, 881 F. Supp. 2d 76 (D.D.C. 2012) (applying District of Columbia law).

⁸ *Cunningham v. State*, 53 N.Y.2d 851, 440 N.Y.S.2d 176, 422 N.E.2d 821 (1981) (where a statute provided that a claim must be filed within 90 days of its accrual, a claimant's notice of intention to file an abuse of process claim was untimely even though it was filed within 90 days of dismissal of the indictments which had been found against him).

1 Am. Jur. 2d Abuse of Process IV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

IV. Actions

B. Recoverable Damages

[Topic Summary](#) | [Correlation Table](#)


Research References

West's Key Number Digest

West's Key Number Digest, [Process](#)  [211](#)

A.L.R. Library

A.L.R. Index, Abuse of Process

West's A.L.R. Digest, Process  [211](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 30

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

IV. Actions

B. Recoverable Damages

§ 30. Recoverability of damages; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  211

A.L.R. Library

[Use of criminal process to collect debt as abuse of process, 27 A.L.R.3d 1202](#)

In an action for abuse of process, the plaintiff may recover whatever actual damage the plaintiff has suffered as a natural and probable consequence of the abuse.¹ The natural and probable consequences of an abuse of process lawsuit include the costs incurred in successfully defending the charge; as such, fees for defending such a lawsuit are considered compensatory damages, not attorney's fees.²

The court cannot consider remote, indefinite, or speculative damages.³ Recoverable damages may include special damages,⁴ which may include physical or mental injury;⁵ expenses; loss of time; and injury to business, property, or financial standing.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [McGann v. Allen, 105 Conn. 177, 134 A. 810 \(1926\).](#)

² [Hundley v. Johnston, 18 A.3d 802 \(D.C. 2011\); Millennium Equity Holdings, LLC v. Mahlowitz, 456 Mass. 627, 925 N.E.2d 513 \(2010\).](#)

When the detriment caused by abuse of process includes being required to defend a lawsuit, attorney's fees are recoverable as an item of damages. [Marlin Oil Corp. v. Barby Energy Corp., 2002 OK CIV APP 92, 55 P.3d 446 \(Div. 3 2002\).](#)

³ Donohoe v. Burd, 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991).

⁴ Bothmann v. Harrington, 458 So. 2d 1163 (Fla. 3d DCA 1984).

⁵ Spellens v. Spellens, 49 Cal. 2d 210, 317 P.2d 613 (1957); McGann v. Allen, 105 Conn. 177, 134 A. 810 (1926); Saliem v. Glovsky, 132 Me. 402, 172 A. 4 (1934); Adelman v. Rosenbaum, 133 Pa. Super. 386, 3 A.2d 15 (1938).

⁶ Saliem v. Glovsky, 132 Me. 402, 172 A. 4 (1934).

As to loss of profits as an element of damages in tort cases, generally, see Am. Jur. 2d, Damages [[WestlawNext® Search Query](#)]

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process § 31

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process

George L. Blum, J.D.

IV. Actions

B. Recoverable Damages

§ 31. Punitive damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Process](#)  211

Forms

Complaint, petition, or declaration—Allegations—Libel suit used to prevent defendant in libel action from exercising right to free expression—Recovery of punitive damages. See Am. Jur. Pleading and Practice Forms, Abuse of Process [[WestlawNext® Search Query](#)]

Instruction to jury—Effect on damages of malice or want of probable cause. See Am. Jur. Pleading and Practice Forms, Abuse of Process [[WestlawNext® Search Query](#)]

Where an abuse of process is accompanied by malice, exemplary or punitive damages may be awarded.¹

That is, upon a proper showing, exemplary or punitive damages are recoverable for abuse of process.² However, absent an abuse of process or malicious prosecution, a defendant's trial tactics and litigation conduct may not be used to impose punitive damages in a tort action under the laws of some jurisdictions.³ A district court's denial of punitive damages to a Liberian corporation, as the prevailing party on tortious abuse of process and slander of title claims against the wife and receiver for the marital estate, was warranted, even though the court found that the wife's and receiver's belief that the husband had hidden assets in the corporation was not a legally sufficient defense, since the court reasonably could have concluded that the wife and receiver sincerely believed that the husband had hidden assets, or at least that their belief was not sufficiently malicious.⁴

Malice may be established by showing that the defendant's conduct reflected spite, ill will, and reckless disregard of its possible consequences to the opposing party.⁵ Townhouse owners did not act with malice, as required in order for the owner of a neighboring ground floor condominium unit to be entitled to punitive damages on her trespass and abuse of process claims, as the townhouse owners, who desired to repair the outside wall of their townhouse, but only had 8.4 inches of yard

space between their townhouse and the condominium property, had been granted permission by the condominium association to enter the limited common element assigned to the condominium owner, and the townhouse owners did not believe that they were impinging on the condominium owner's rights.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Steele v. Morris](#), 608 F. Supp. 274, 1 Fed. R. Serv. 3d 956 (S.D. W. Va. 1985); [Spellens v. Spellens](#), 49 Cal. 2d 210, 317 P.2d 613 (1957); [McGann v. Allen](#), 105 Conn. 177, 134 A. 810 (1926); [Bothmann v. Harrington](#), 458 So. 2d 1163 (Fla. 3d DCA 1984); [Tapley v. Youmans](#), 95 Ga. App. 161, 97 S.E.2d 365 (1957); [Sokolowske v. Wilson](#), 211 Iowa 1112, 235 N.W. 80 (1931); [Saliem v. Glovsky](#), 132 Me. 402, 172 A. 4 (1934); [Board of Ed. of Farmingdale Union Free School Dist. v. Farmingdale Classroom Teachers Ass'n, Inc.](#), Local 1889 AFT AFL-CIO, 38 N.Y.2d 397, 380 N.Y.S.2d 635, 343 N.E.2d 278 (1975); [Adelman v. Rosenbaum](#), 133 Pa. Super. 386, 3 A.2d 15 (1938); but see [Malone v. Belcher](#), 216 Mass. 209, 103 N.E. 637 (1913) (exemplary damages are not recoverable for abuse of process). An award of \$150,000 in punitive damages to the plaintiff in a malicious abuse of process action was not excessive; the defendant escrow company's belief that the plaintiff committed larceny was unreasonable, the plaintiff never refused to return money that was mistakenly deposited in his account, the parties were negotiating over the money's return when defendant procured plaintiff's prosecution, and plaintiff was arrested twice and suffered stress in his marriage. [Weststar Mortg. Corp. v. Jackson](#), 131 N.M. 493, 2002-NMCA-009, 39 P.3d 710 (Ct. App. 2001), rev'd on other grounds, 2003-NMSC-002, 133 N.M. 114, 61 P.3d 823 (2002).
- ² [Sprint Communications Co., L.P. v. Leggett](#), 307 S.W.3d 109 (Ky. 2010).
- ³ [Bosack v. Soward](#), 586 F.3d 1096 (9th Cir. 2009) (applying California law).
- ⁴ [Kohlrautz v. Weber](#), 365 Fed. Appx. 54 (9th Cir. 2010).
- ⁵ [Nienstedt v. Wetzel](#), 133 Ariz. 348, 651 P.2d 876, 33 A.L.R.4th 635 (Ct. App. Div. 1 1982); [Williams v. Central Concrete Inc.](#), 599 S.W.2d 460 (Ky. Ct. App. 1979); [Bull v. McCuskey](#), 96 Nev. 706, 615 P.2d 957 (1980) (abrogated on other grounds by, [Ace Truck and Equipment Rentals, Inc. v. Kahn](#), 103 Nev. 503, 746 P.2d 132 (1987)). Where an attorney persuaded a prosecuting attorney to institute a criminal proceeding against the attorney's former business associate in order to compel the associate to pay an outstanding debt, an award of punitive damages was justified; such abuse of the criminal process constituted a conscious disregard for the rights and safety of the associate, who was jailed for two days as a result of the abuse. [Donohoe v. Burd](#), 722 F. Supp. 1507 (S.D. Ohio 1989), judgment aff'd, 923 F.2d 854 (6th Cir. 1991).
- ⁶ [Wood v. Neuman](#), 979 A.2d 64 (D.C. 2009).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

1 Am. Jur. 2d Abuse of Process Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Abuse of Process
George L. Blum, J.D.

[Topic Summary](#)

Correlation Table

Abuse of Process 2005	2016
1	§1
2	§2
3	§3
4	§4
5	§5
6	§6
7	§7
8	§5
8	§8
9	§9
10	§10
11	§11
12	§12
13	§13
14	§14
15	§15
16	§16

Correlation Table, 1 Am. Jur. 2d Abuse of Process Correlation Table

17	§17
18	§18
19	§19
20	§20
21	§21
21	§22
21	§23
22	§24
22	§25
23	§26
24	§27
25	§22
25	§28
26	§29
27	§30
28	§31

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.